90-277

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

NO_____

CURTIS L. WRENN
P. O. Box 203
Fort Drum, NY 13603,

Petitioner.

vs

G. BRUCE McFADDEN, Individually and as
DIRECTOR, UNIVERSITY OF MD. HOSPITAL,
STATE OF MARYLAND
22 S. Greene Street
Baltimore, MD 21201,

Respondents.

PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

QUESTIONS PRESENTED FOR REVIEW

This is a case in which the district court denied the petitioner's motion for recusal and his request for clarification of trial issues at the pre-trial level. Also, at the appellate level sanctions in the form of attorney fees were imposed on the petitioner for appealing the decisions of the district court. If this Court grants the petition, it will have to decide whether the rights of the petitioner were abridged by the lower courts' decisions. More specifically:

1. Whether the district court abused its discretion when the presiding judge refused to remove himself from the case.

2. Whether the decisions in this case are contrary to decisions of this Court and the other courts of appeals?

3. Whether the district court's repeated denials of petitioner's recusal

motions and the court's denial of his request for clarification of trial issues, are appealable.

4. Whether an appeal is frivolous when the appeal is based on the appellant's attempt to have the court of appeal correct defects created by decisions of the court of appeals, decisions which are contrary to decisions of this Court and the other courts of appeals. See Appendixes K-O. amd X-AA.

5. Whether an appeal is frivolous when it is based on the district court's denial of a motion for recusal AND a motion for clarification of issues for trial. See Appendixes D-F.

6. Whether the lower courts abused their discretion in "apparently" dismissing the plaintiff's constitutional claims under the First and Fourteenth amendment, without providing ANY explanation and/or reason for the dismissal. See Appendixes W-AA.

7. Whether the decision to dismiss the

plaintiff's Title VII discharge claim, allegedly because it was not timely filed with the EEOC, was contrary to the decisions of this Court in Zipes v. Trans World Airlines, Inc., 455 U.S. 385, and EEOC v. Commercial Office Products Co., Docket No. 86-1696, May 1988 (56 LW 4424), and decisions of the other courts of appeals. See Appendixes K-O, X-Z.

8. Whether the decision to dismiss the plaintiff's Title VII retaliaiton claim, allegedly because the claim was not presented to the EEOC, is contrary to decisions of this Court and the other courts of appeals.

9. Whether the decision to dismiss the plaintiff's Title VI claim, allegedly because of the Maryland's three-year statute of limitations, was a clear abuse of discretion, considering that at the time of the dismissal by the courts the administrative claim was still pending before the responsi-

ble federal agency. Appendixes V, X and Y.

10. Whether an administrative charge which is timely filed under Titles VI and VII with the federal agency responsible for administering Title VI, is considered timely filed with the federal and/or state agency responsible for Title VII. App K-N and V.

11. Whether the dismissal of the plaintiff's "pattern or practice" claim, based on a continuing violation (employer paying Negroid persons less than caucasians doing similar work), was contrary to decisions of this Court in Delaware State College v. Ricks, 449 U.S. 250, and United Air Lines v. Evans, 431 U.S. 553. Appendixes K-P, and R.

12. Whether the court of appeals abused its discretion when it (1) refused to rule on the Motion for Clarification of Trial Procedure (App F), and (2) when it imposed Rule 11 sanctions on the petitioner for filing the motion. App D-J, and Y.

13. Whether under the Constitution and

laws of the United States, when a citizen believes, formed after protracted study and research, a court has committed grievous errors, resulting in the deprivation of rights, privileges and immunites secured to him, has the right to seek clarification in order to correct perceived erroneous decisions PRIOR to the trial of the case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OPINIONS DELIVERED IN THE CASE

At the time (1977) the issues in this case occured, the University of Maryland Hospital was an entity of the State of Maryland. Moreover, the petitioner was an employee, having been hired in May 1976 by Respondent McFadden as Associate Director for Administration.

In an attempt overcome demonstrated bias and prejudice by the presiding judge, the petitioner presented his second motion for recusal. Like the first motion the second motion was denied. See Appendixes D and E.

Also, in attempt to clarify the issues for trial and to "cure" apparent defects resulting from decisions of the district court and the court of appeals, the petitioner filed Plaintiff's Motion for Postponement and for Clarification of Trial

Procedure. The motion was denied. App F.

The district court's decision at Appendix D was appealed to the court of appeals. Not only was the appealed denied, the court imposed sanctions, allegedly because the appeal was frivolous. App B,C.

The court of appeals in the process of rejecting the appeal, refused to render an opinion on the issues presented. The court, in fact, refused to comment on the Motion for Clarification.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1254(1), 1651 and 1915. This Court is being asked to review the continuing actions by the Fourth Circuit Court of Appeals to deprive the petitioner of his civil, legal and constitutional rights.

Jurisdiction is also invoked under the Constitution and laws of the United States, including but not limited to the First and Fourteenth Amendments, and Titles VI and VII of the Civil Rights Act of 1964, as amended, in that the decisions of the lower courts would deprive the petitioner of free speech, procedural due process, and equal pay for performing work similar to that performed by caucasians.

The jurisdiction of this Court is also invoked to review the actions of the lower

courts, in that they have rendered decisions which are contrary to decisions of this Court and the other courts of appeals.

This Court is being asked to review the decisions of the district court and the court of appeals, in that both courts have made decisions against the petitioner without considering the facts and applicable caselaw. If this decision is permitted to stand it will further encourage employers throughout America to continue their practice of denying the petitioner equal employment opportunity.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I:

> Congress shall make no law ... abridging the freedom of speech ...; or the right of the people to peaceably ... to petition the Government for a redress of grievances.

United States Constitution, Amendment V:

> Nor shall any person ... be deprived of life, liberty, or property, without due process of law ...

United States Constitution, Amendment XIV:

> Nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The petitioner was employed by Respondent McFadden as Associate Director for Administration in May 1976 at an annual salary of $35,000. As an "unclassified employee" he was subjected to a one-year probation. Upon successful completion of the required probationary period, he was awarded "permanent" status. In addition he was given a merit increase of %10.

During June of 1977 the petitioner, while serving as a member of the Budget Committee, observed that there was a clear pattern of blacks and females being paid less than white males doing similar work. He then submitted a written request to Respondent McFadden on June 27, 1977 to have his salary adjusted. The request was denied on July 11, 1977. On the same date the petitioner was informed that his employment was terminated.

On or about March 3, 1978 petitioner filed an administrative charge of unlawful employment discrimination with what he thought was the proper federal agency (U.S. Department of Health, Education and Welfare (DHEW)). See Appendixes K-O and T-V.

The DHEW charge form (App O) was also mailed to the EEOC and was received May 30, 1978. The EEOC "perfected" the charge on its form (App P, R and S).

The EEOC rendered a decision of probable cause. The petitioner then filed his complaint in the district court. The district court dismissed the claim. App X.

The district court's decision was appealed. While the appeal was pending, the Title VI claim was conciliated by DHHS (App T-V) without the petitioner's involvement.

The appeal was denied by the court of appeal, allegedly because the discharge claim was not timely filed; the retaliation claim was not presented to the EEOC;

and and that the Title VI claim was voided by the Maryland's statute of limitations. See App K-N, T-V, X-AA.

The petitioner attempted to "cure" the defects resulting from the decisions of the lower courts by attempting to amend the case pending in the district court. The plaintiff's motion to amend the complaint was denied by the district court. That decision was appealed to this Court in Docket No 89-1256 (Wrenn v. McFadden), cert. denied.

In a later attempt to "cure" the defects and to prepare for trial in the district court, the petitioner filed Plaintiff's Motion for Postponement and for Clarification of Trial Procedure (App F). The motion was denied. (App D and F).

The decision of the district court was appealed. The court of appeals declined to render an opinion regarding Plaintiff's Motion for Postponement and For

Clarification of Trial Procedure. Instead the court imposed Rule 11 sanctions and awarded attorney fees to the appellees, allegedly because the appeal was frivolous.

REASON FOR GRANTING WRIT

ARGUMENT I - IMPORTANT PUBLIC CONCERN

1. This writ should be granted because of the enormous public concern regarding blacks and females being paid less than white males doing similar work. See e.g., Bazemore v. Friday, Cert. to Fourth Circuit, Sup. Ct., Case Nos. 85-93 and 85-428 (1986).

2. This writ should also be granted because the court of appeals invalidated a Congressional mandate when it invoked the Maryland's three-year statute of limitations to dismiss the petitioner's Title VI claim while that claim was still pending before the responsible federal agency. See, e.g. Cannon v. University of Chicago, 441 U.S.

677. See also, App K-M and V.

3. This writ should also be granted because the lower courts have refused to render an opinion and/or decision regarding the petitioner's constitutional claims under the First and Fourteenth Amendments. More specifically, the Respondent McFadden, in response to the petitioner's free-speech act in requesting a salary adjustment, after he learned that he was being paid less than similarly situated white males, terminated the petitioner's employment. Later officials of the State of Maryland informed the petitioner he was not entitled to a hearing in connection with the employment termination. See Appendix Q. Also, see Givhan v. Western Line Consol. School, 99 U.S. 693 (1979); Mt. Healthy City Bd. of Ed. v. Doyle, 429 U.S. 274; Roth v. United States, 354 U.S. 476, 484 (1957).

ARGUMENT II - JURISDICTIONAL REQUIREMENTS OF TITLE VII

4. The central issue in this case is

whether the district court had jurisdiction to decide the petitioner's discharge and retaliation claims under Title VII. Petitioner submits for the Court consideration that even if he had not filed a timely charge of unlawful discrimination with the EEOC, the federal courts still had jurisdiction to consider his Title VII discharge and retaliation claims. See, e.g., Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 392-98; Gupta v. East Texas State University, F.2d 411, 414 (5th Cir. 1981). In the case at bar, the district court ruled it did not have jurisdiction despite a clear demonstration by the plaintiff that a timely charge had been filed, albeit the wrong federal agency (i.e., DHEW).

ARGUMENT III - FILING CHARGES IN DEFERRAL STATE

5. Contrary to the decisions of the lower courts, petitioner maintains that his charge at Appendixes K-P constitutes a

timely filed Title VII charge. See, e.g., EEOC v. Commercial Office Products Co., U.S. Sup. Ct., Docket No 86-1696 (1988), 56 LW 4424; Green v. Los Angeles County Superintendent of Schools, (CA 9 1989) Docket No 88-5830, 58 LW 2169. The facts clearly demonstrate that the charge was filed well within the allowable 300-days in a deferral state such as Maryland.

ARGUMENT IV - CONTINUING VIOLATION DOCTRINE

6. The petitioner has alleged that he was maintained in a discriminatory wage system (Negroid persons paid less than Caucasians doing similar work) from at least July 11, 1977 to July 1, 1978 (App O), and that when he requested a salary adjustment, his employment was terminated by Respondent McFadden. Petitioner submits that on the basis of a "present" violation occurring on July 1, 1978 (his last bi-weekly paycheck), that his charge at Appendixes K-P was timely filed. See, United Air Lines, Inc. v.

Evans, 431 U.S. 553, 558 (1977); Delaware State College v. Ricks, Case No 79-939 (December 1980).

ARGUMENT V - PATTERN OR PRACTICE CHARGE

7. The petitioner has maintained that the respondents had a "practice" of paying blacks and females less than white males doing similar work (App O and R). A legion of cases hold that a charge filed with the EEOC alleging a pattern or practice, is considered timely if it is filed anytime the practice is in place OR within 180 days after the last act of discrimination. In the case at bar, the last act occurred on July 1, 1978 when the petitioner received his last bi-weekly paycheck. It is unrefuted that the two charges (App K-O. and P) were filed within the requisite time frame. See, e.g. Lorance v. AT&T Technologies Inc., 57 LW 4654 (US Sup Ct 1989); Held v. Gulf Oil Company, (6th Cir. 1982) 684 F.2d 427.

ARGUMENT VI - TITLE VI STATUTE OF LIMITATIONS IN MARYLAND

8. This Court is being asked to decide whether a Title VI claim may be dismissed by a federal court, allegedly because of the statute of limitations of a state, while that claim is pending before the responsible federal agency. The court of appeals dismissed the petitioner's Title VI claim while being aware that he had attempted to exhaust the required administrative remedies by, among other things, filing a timely charge with DHEW (App K-P). Moreover, the charge was conciliated while the appeal was pending (App V).

ARGUMENT VII - RULE 11 SANCTIONS

9. This Court is being asked to determine whether the court of appeals abused its discretion when it imposed Rule 11 sanctions on the petitioner for allegedly filing a frivolous appeal.

10. The court of appeals imposed Rule 11 sanctions on the petitioner for appealing

decisions of the district court, after the latter denied his motion to amend (Sup Ct Docket 89-1256 (1990) cert denied), and after the same court denied his two motions which are the subject of this petition, namely App E and F.

11. Petitioner submits that the imposition of sanctions is a clear abuse of the court's discretion, in that there has been no showing and/or finding that the petitioner's appeal was frivolous and/or was without foundation and/or was the result of bad faith and/or was groundless and/or was the result of contumacious conduct. The facts and legal argument of record clearly demonstrate that the two motions (App E and F) which allegedly resulted in the imposition of sanctions were part of the petitioner's continuing efforts to vindicate his civil, legal and constitutional rights.

12. The court of appeals went awry in assessing the petition the cost of attorney

fees, when the ONLY "wrong" he has been accused of is exercising the rights and privileges secured to him by the Constitution and laws of the United States. To "punish" the petitioner for trying to have the courts correct obvious errors and/or clear misapplication of the laws governing employment discrimination, is clearly contrary to the Constitution and laws of the United States.

13. The primary issue before this Court concerns the appealability of the district court's denial of the plaintiff's Motion for Recusal and his Motion for Clarification. A secondary issue is whether the court of appeals in a civil rights action has authority to order an appellant to pay legal fees of his opponent under Rule 11, and its standards, or whether the awarding of such fees is controlled by the Civil Rights Attorney's Fee Award Act, and the standards promulgated in Christainburg Garment Co.

v. EEOC, 434 U.S. 412 (1978).

14. This case turns on the question of whether the petitioner's appeal of the district court's denial of the two motions at E and F, was reasonable under the circumstances. In arriving at a decision, the petitioner submits that the Court should apply an "objective standard of reasonableness" in determining whether the appeal was reasonable. See, e.g., INVST Financial Group, Inc. v. Chem-Nuclear Systems, Inc., 815 F.2d 391 (6th Cir.), cert. denied, 1098 S. Ct. 291 (1987); Community Elec. Service v. National Elec. Contr., 869 F.2d 1235 (9th cir. 1989).

CONCLUSION

Based upon the foregoing, this case should be remanded to the court of appeals with instructions to (1) either revoke its imposition of sanctions and/or explain the basis for its action; and (2) to issue an

order clarifying and/or supplementing its decision in Wrenn v. McFadden, Docket No 85-1664 (App Z).

The issues in this case have been pending at various levels from March 3, 1978 to the present, or more than twelve years. For this reason the Court is being asked to remand this case to the lower courts with instructions that the petitioner be granted a speedy hearing on the issues herein presented; namely Title VII violations (discharge and retaliation) and Title VI (assess to care by Title VI recipients).

Respectfully submitted,

Curtis L. Wrenn, Pro Se
P. O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-7817

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

NO_____

CURTIS L. WRENN
P. O.Box 203
Fort Drum, NY 13603,

Petitioner.

vs

G. BRUCE McFADDEN, Individually and as
DIRECTOR, UNIVERSITY OF MD. HOSPITAL,
STATE OF MARYLAND
22 S. Greene Street
Baltimore, MD 21201,

Respondents.

PETITIONER'S APPENDIXES

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

LIST OF PETITIONER'S APPENDIXES

APPENDIX A
1 of 2 Pages

FILED: July 26, 1990

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 89-1080

CURTIS L. WRENN, Individually and on behalf of all others similarly situated,

Plaintiff-Appellant,

versus

G. BRUCE MCFADDEN, Individually and as Director of the University of Maryland Hospital; THE UNIVERSITY OF MARYLAND HOSPITAL,

Defendants-Appellees,

and

ALBIN O. KUHN, Individually and as Chancellor or the University of Maryland at Baltimore; WILSON H. ELKINS, Individually and as President of the University of Maryland; JOHN S. TOLL, Individually and as President of the University of Maryland; BLAIR LEE, III, Individually and as Acting Governor of the State of Maryland; B. HERBERT BROWN, Individually and as Chairman of the Board of Regents of the University of maryland at Baltimore; DONALD W. O'CONNELL, Individually and Vice President for General Administration of the University of Maryland; UNIVERSITY OF MARYLAND; STATE OF MARYLAND,

Defendants.

O R D E R

Upon consideration of appellant's pro se motion for leave to file request for reconsideration out of time;

IT IS ORDERED that appellant is granted leave to file request for reconsideration out of time and the request for reconsideration of the Clerk's order of June 15, 1990 is denied.

Entered at the direction of Judge Hall with the concurrence of Judge Wilkinson and Judge Wilkins.

For the Court

/s/John M. Greacen
Clerk

APPENDIX B
1 of 2 Pages

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED: May 25, 1990

No. 89-1080

CURTIS L. WRENN, Individually and on behalf of all others similarly situated,

Plaintiff-Appellant,

v.

G. BRUCE MCFADDEN, Individually and as Director of the University of Maryland Hospital; THE UNIVERSITY CF MARYLAND HOSPITAL,

Defendants-Appellees,

and

ALBIN O. KUHN, Individually and as Chancellor or the University of Maryland at Baltimore; WILSON H. ELKINS, Individually and as President of the University of Maryland; JOHN S. TOLL, Individually and as President of the University of Maryland; BLAIR LEE, III, Individually and as Acting Governor of the State of Maryland; B. HERBERT BROWN, Individually and as Chairman of the Board of Regents of the University of maryland at Baltimore; DONALD W. O'CONNELL, Individually and Vice President for General Administration of the University of Maryland; UNIVERSITY OF MARYLAND; STATE OF MARYLAND,

Defendants.

On Petition for Rehearing with Suggestion for Rehearing in Banc

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The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Hall with the concurrence of Judge Wilkinson and Judge Wilkins.

For the Court,

/s/John M. Greacen
Clerk

APPENDIX C
1 of 4 Pages

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 89-1080

CURTIS L. WRENN, Individually and on behalf of all others similarly situated,

Plaintiff-Appellant,

versus

G. BRUCE MCFADDEN, Individually and as Director of the University of Maryland Hospital; THE UNIVERSITY OF MARYLAND HOSPITAL,

Defendants-Appellees,

and

ALBIN O. KUHN, Individually and as Chancellor or the University of Maryland at Baltimore; WILSON H. ELKINS, Individually and as President of the University of Maryland; JOHN S. TOLL, Individually and as President of the University of Maryland; BLAIR LEE, III, Individually and as Acting Governor of the State of Maryland; B. HERBERT BROWN, Individually and as Chairman of the Board of Regents of the University of maryland at Baltimore; DONALD W. O'CONNELL, Individually and Vice President for General Administration of the University of Maryland; UNIVERSITY OF MARYLAND; STATE OF MARYLAND,

Defendants.

Appeal from the United States District Court for the District of Maryland, at Baltimore. John R. Hargrove, District Judge. (C/A No. 82-2044-HAR)

Submitted: February 28, 1990

Decided: May 8, 1990

Before HALL, WILKINSON, and WILKINS, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Curtis L. Wrenn, Appellant Pro Se. Robert Bolon Barnhouse, PIPER & MARBURY, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

PER CURIAM:

Curtis L. Wrenn appealed the order of the district court denying his motions for recusal, postponement of trial, and stay of discovery in his employment discrimination action. The district court's denial of his motion for recusal is not an appealable order. General Tire & Rubber Co. v. Watkins, 331 F.2d 192, 198 (4th Cir. 1963), cert. denied, 377 U.S. 952 (1964); City of Cleveland v. Krupansky, 691 F.2d 576 (6th Cir.), cert. denied, 449 U.S. 834 (1980). Similarly, the district court's denial of Wrenn's other motions is not immediately appealable. 28 U.S.C. Subsection 1291. Further, the district court did not certify its orders for immediate appeal pursuant to 28 U.S.C. Subsection 1292(b). therefore, the motion to dismiss the appeal as interlocutory is granted. Catlin v. United States, 324 U.S. 229, 233 (1945).

The appellees moved for sanctions against Wrenn for filing a frivolous appeal. Rule 38, Fed. R. App. P., provides:

> If the court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

This Court warned Wrenn in an opinion dismissing a previous interlocutory appeal that if he filed another interlocutory appeal without the district court's certification under 28 U.S.C. Subsection 1292(b), the Court would consider granting a motion for sanctions on appeal. Wrenn v. McFadden, N. 89-2121 (4th Cir. Oct. 4, 1989) (unpublished). Because this appeal is interlocutory and frivolous, we grant the motion for sanctions in the form of single costs and attorney's fees in favor of the appellees. The appellees are directed to file an itemized statement of costs and fees with the office of the Clerk of this Court within 20 days.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not significantly aid in the decisional process.

DISMISSED

APPENDIX D
-1 of 2 Pages

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Curtis L. Wrenn, Plaintiff,	*	
	*	CIVIL ACTION NO.
v.		HAR 82-2044
	*	
G. Bruce McFadden, et al. Defendants.	*	
	*	

O R D E R

Currently pending before this Court are plaintiff's Motion for Recusal, Motion for Postponement and Motion to Stay Discovery. No hearing is deemed necessary. Local Rule 103.5 (1989).

After a careful review of the files and the papers contained therein, IT IS this 9th day of November, 1989, ny the United States District Court for the District of Maryland, hereby ORDERED:

1. That plaintiff's Motion for Recusal BE, and the same hereby IS, DENIED.

2. That plaintiff's Motion for postponement BE, and the same hereby IS, DENIED.

3. That plaintiff's Motion to Stay Discovery BE,a nd the same hereby IS, DENIED AS MOOT.

4. That the Clerk of the Court mail copies of this Order to all parties of record.

/s/John R. Hargrove
United States
District Judge

APPENDIX E
1 of 6 Pages

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

CURTIS L. WRENN,

Plaintiff,

vs.

G. BRUCE MCFADDEN, ET AL., CIVIL HAR-82-2044

Defendants.

MOTION FOR RECUSAL

Pursuant to 28 USC 144 plaintiff moves Judge John R. Hargrove to remove himself on the basis of personal bias and continuing abuse of discretion. Plaintiff's Affidavit at Exhibit #1 is submitted in support of this motion.

Respectfully submitted,

/s/Curtis L. Wrenn, Pro se
P.O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-4021

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been mailed to Robert B. Barnhouse, Esq., 1100 Charles Center South, 36 South Charles Street, Baltimore, MD 21201, on the 9th day of August 1989, via U. S. mail, postage prepaid.

/s/Curtis L. Wrenn

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MARYLAND

CURTIS L. WRENN,

Plaintiff,

vs.

G. BRUCE MCFADDEN, ET AL., CIVIL HAR-82-2044

Defendants.

AFFIDAVIT

I, Curtis L. Wrenn, after being duly sworn, state that:

1. I am at least 18 years of age.

2. This affidavit is made in support of my motion for recusal. I respectfully request that the Honorable John R. Hargrove remove himself from this case.

3. As grounds for my request, I respectfully submit that Judge Hargrove has demonstrated personal bias and a malicious abuse of discretion in this case. Some examples:

(1) page 1 and 5 of Appendix A where Judge Hargrove states to my former attorney (Harvey Wasserman) "you got in this case a little late".

Judge Hargrove knew or should have known that his statement was not supported by the facts of record which clearly demonstrated that Wasserman had been the attorney of record for more than eight months and during that time had filed NO documents or pleadings with the court. See also page 2 of Appendix B.

(2) Page 6 of Appendix A where Judge Hargrove states "I'll keep him busy". The statement was issued as a veil threat to me in an effort to coerce and intimidate me not to pursue claims to vindicate my civil, legal and constitutional rights in the federal courts.

(3) pages 1, 2 and 3 of Appendix C where Judge Hargrove states "You were sent a copy of the schedule on February the 17th and to your address at Fort Drum, New York". The statement was made despite clear evidence that it was contrary to documents available to him. More specifically Appendix D clearly shows the Scheduling Order was sent to my former attorney, a fact subsequently confirmed by Attorney Wasserman.

(4) Appendix B. Attorney Wasserman was apparently permitted to withdraw from this case, as my attorney of record, without filing a motion with the court.

(5) Appendix E, page 4 and 5 of Appendix C. Judge Hargrove issued an order directing the defendants to respond to my motion for summary judgment. Despite this clear order, Judge Hargrove refused to require the defendants to comply with it. Instead, he issued an order denying the motion, allegedly because "no discovery had been held". Judge hargrove conveniently ignored the fact that he issued his Order of Dismissal on May 24, 1985 despite the fact that NO discovery had been held. See also Appendix F.

3. For the foregoing reasons, I am asking that Judge Hargrove remove himself from any further proceedings in this or any other lawsuits which I am or may be involved.

9 Aug 89 /s/Curtis L. Wrenn

Sworn to and subscribed before me this 9th day of August, 1989.

/s/Laurie A. Morrow
Notary 4951658

My commission Expires: 05/30/91

APPENDIX F
1 of 4 Pages

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CURTIS L. WRENN	*	
	*	
Plaintiff	*	Civil Action No.:
	*	HAR-82-2044
vs.	*	
	*	
G. BRUCE McFADDEN, et al	*	
	*	
Defendants	*	

****

MOTION FOR POSTPONEMENT AND FOR CLARIFICATION
OF TRIAL PROCEDURE

Curtis L. Wrenn, Plaintiff, pro se, hereby moves the Court for a postponement of the current trial date od September 11, 1989 and for other relief and in support thereof states:

1. At the present time the instant law suit is scheduled for trial on September 11, 1989 before the Honorable John R. Hargrove. As the Court is aware the Plaintiff has been representing himself during a large part of the instant litigation.

2. Plaintiff has spoken with local Maryland counsel, admitted to the Federal District Court for the District of Maryland, who has indicated a possible willingness to represent Plaintiff in the

instant law suit if two issues can be resolved in Plaintiff's favor.

3. First, said attorney refuses to enter his appearance unless the Court agrees to a postponement to allow him sufficient time for trial preparation. Second, said attorney refuses to enter his appearance unless and until the trial court clarifies, prior to trial, its interpretation of the decision by the Fourth Circuit dated September 6, 1988 in which the Fourth Circuit remanded the instant case for a trial on the Title VII Wage Discrimination Claim.

4. Said attorney indicates that he would be willing to enter his appearance if the court interprets said decision to allow Plaintiff the opportunity to prove his lost wages for the period of time following Plaintiff's discharge in July, 1978. If, instead, the court interprets said ruling to mean that the only lost wages Plaintiff may claim are through Plaintiff's last day of work at the hospital said attorney will not enter his appearance in the case. Under such an

interpretation Plaintiff's claim for lost wages would be less than $10,000. If, on the other hand, the Title VII wage discrimination claim would include lost wages for a period of time after Plaintiff's discharge, the Plaintiff's potential claim is for a substantially greater sum.

5. The instant request of the trial court, although unusual, may greatly aid Plaintiff in obtaining legal counsel and may provide an adequate basis for potential settlement of the case.

6. The clarification Plaintiff is requesting is as a result of an ambiguity arising out of the Fourth Circuit's failure to clarify the effect of dismissal of the retaliation and wrongful discharge claims.

7. The question posed regarding the effect of the Fourth Circuit's decision is a question of law which does not require submission of any facts in the record. As a practical matter, a pre-trial determination of this issue is in the interest of all parties concerned.

WHEREFORE, Plaintiff requests the court postpone

the instant trial date to permit the Plaintiff sufficient time to retain counsel and requests that the Court rule, prior to trial, that the wage claim which has been permitted by the Fourth Circuit includes periods of time following Plaintiff's discharge in July, 1978.

/s/Curtis L. Wrenn
P.O. Box 203
Fort Drum, NY 13603
(315) 787-4972

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of August, 1989 I mailed a copy of the aforegoing to: Robert B. Barnhouse, Esq. 1100 Charles Center South, 36 S. Charles Street, Baltimore, MD 21201.

/s/CURTIS L. WRENN

APPENDIX G
1 of 8 Pages

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CURTIS L. WRENN

Plaintiff-Appellant,

vs. Case No 89-1080

G. BRUCE McFADDEN, ET AL

Defendants-Appellees,

PETITION FOR REHEARING IN BANC

INTRODUCTION

COMES NOW THE APPELLANT to petition the entire Court and requests that it reconsider the decisions rendered in this case, on the grounds that:

1. The Court has repeatedly rendered decisions which are contrary to prior decisions of this Court, the other courts of appeals, and the Supreme Court of the United States. Moreover, the decisions in this case rendered by the district court are contrary to prior decisions rendered by that court in similar cases.

2. The decisions in this case reflect clear abuse of discretion. The most important example of

which is the fact that the members of the Court either purposefully ignored the motion for Postponement and for Clarification of Trial Procedure and/or refused to render a decision regarding this important pleading either because of appellant's race and/or because he is a pro se litigant.

3. Based on the foregoing, the appellant appeals to the full court and requests oral argument to respond to ANY and ALL questions the members may have. This request is made on the grounds that the appellant calls into question (1) the judicious procedures of this Court, (2) the veracity of the three-judge panel, and (3) the ability of this Court to render a fair and impartial decision in ANY claim involving the Appellant Curtis L. Wrenn. More specifically, the appellant hereby alleges, based on the following argument and facts, that the judges of this Court have ignored important facts and case law, and/or made false statements, and/or made unsupported decisions, and/or rendered decisions against the manifest weight of the admissible

evidence, and/or rendered decisions against the appellant which are contrary to previous decisions rendered on behalf of other citizens in similar circumstances, and, more importantly, has taken actions specifically designed to deny the appellant rights, privileges and immunities secured by the Constitution and laws of the United States.

ARGUMENT

1. For unknown reasons, the Court has failed to render a decision on the Motion for Postponement and for Clarification of Trial Procedure. Similarly, the Court and the district court refused to render an opinion and/or decision regarding appellant's earlier Constitutional claims based on the First and Fourteenth Amendments. The Motion for Postponement and for clarification was the appellant's latest attempt to have the courts clarify decisions rendered against him which were contrary to prior decisions of this Court, the other courts of appeals and the Supreme Court. See Exhibits 1, 2 and 3.

2. The Court dismissed appellant's Title VI claim, allegedly because of Maryland's Statute of

Limitations, while knowing the claim was still before the Federal agency required to render an administrative determination BEFORE the claim could be pursued in the federal courts. The appellant's Title VI argument is, by analogy, that if he had filed an administrative claim against the Federal Government, the subsequent claim in federal court must be filed within six months AFTER the final denial by the responsible Federal agency. Thus, the Title VI claim against the State of Maryland should not have been dismissed while that claim was pending an administrative decision. See, e.g., 28 USC 2401(b). Also see, Wrenn v. University of Kansas, 561 F. Supp 1216 (1983).

3. The denial of the request to have Judge Hargrove removed as presiding judge, based upon two timely filed legally sufficient affidavits regarding separate alleged instances of impropriety by him, is tantamount to denying the appellant a fair and impartial hearing, in violation of the Constitution and laws of the United States. The appellant's "Promptness in asserting disqualification is

required to prevent a party from awaiting the outcome before taking action." Davis v. Cities Service Oil Co., 420 F.2d 1278, 1282 (10th Cir. 1970). Accordingly, if the decisions in this case are permitted to stand, the appellant would have to await the outcome of an expensive trial and then file a third motion for recusal and more likely than not still another appeal.

4. The Court, for reasons still not articulated by the Court, dismissed appellant's Title VII discharge claim allegedly because it had not been timely filed with the EEOC, while knowing (1) the claim was presented well before the required 300 days and well within the 180 days of the "last and/or present act" of unlawful employment discrimination, and (2) while knowing that this Court in its prior decisions ruled that under the theory of continuing violation a claim is timely filed if it is filed within 180 days of the last act of discrimination. The appellant filed his administrative charge on or about March 3, 1978, May 30, 1978 and July 5, 1978, well within the

limitations period based on the last act occurring July 1, 1978 (appellant's last pay check on his claim of being paid less than similarly situated white males). See, e.g., Jenkins v. Home Ins. Co. 635 F.2d 310 (4th Cir 1980); Hill v. AT&T Technologies, Inc. 731 F.2d 175 (4th Cir 1984) (continuing violation based on a present violation). See also, Delaware State College v. Ricks, 449 U.S. 250 (1980) (continuing violation based on a current violation).

5. Also for unexplained reasons, the Court dismissed appellant's Title VII retaliation claim allegedly because such a claim was not presented to the EEOC. At the time the decision was rendered, the Court was acutely aware that the EEOC had acknowledged the retaliation claim. Moreover, the Court was also acutely aware that the Supreme Court of the United States had ruled that filing a charge with the EEOC is not a jurisdictional prerequisite. See Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 102 S. Ct. 1127, 71 L. Ed.2d 234 91982). For this reason the appellant prays the Court will

either reverse its decisions against him or at least cite the case law precedent for its decision.

WHEREFORE, the appellant prays this case will be reviewed by the full court and that he will be granted permission to present oral argument in his behalf. In that connection, the appellant is acutely and painfully aware of the seriousness of the charges being made against this Honorable Court and the powers its has to impose sanctions. However, after much soul searching, the appellant sincerely believes that his actions are warranted and MUST be taken considering the recurring blatantly false accusations being leveled against him by this Court. The appellant is also aware of the recurring instances of the Court's refusal to consider his pleadings, facts, and arguments (albeit not perhaps in the best form of legal presentation). It should also be noted that both courts, while maliciously criticizing the appellant for his persistence in pursuing his legitimate claims, have 91) refused to respond specifically to his legal and fact based

arguments, and (2) have refused to appoint legal counsel to represent him. Why?

Respectfully submitted,

/s/Curtis L. Wrenn
Curtis L. Wrenn, Pro Se
P.O. Box 203
Ft. Drum, NY 13603
Tel: (315) 772-7817

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed via U. S. mail, postage prepaid, on the 6th day of June, 1990 to Robert B. Barnhouse, Esq. 1100 Charles Center South, 36 S. Charles Street, Baltimore, MD 21201.

/s/Curtis L. Wrenn

FILED: June 15, 1990

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 89-1080

CURTIS L. WRENN, Individually and on behalf of all others similarly situated,

Plaintiff-Appellant,

versus

G. BRUCE MCFADDEN, Individually and as Director of the University of Maryland Hospital; THE UNIVERSITY OF MARYLAND HOSPITAL,

Defendants-Appellees,

and

ALBIN O. KUHN, Individually and as Chancellor or the University of Maryland at Baltimore; WILSON H. ELKINS, Individually and as President of the University of Maryland; JOHN S. TOLL, Individually and as President of the University of Maryland; BLAIR LEE, III, Individually and as Acting Governor of the State of Maryland; B. HERBERT BROWN, Individually and as Chairman of the Board of Regents of the University of Maryland at Baltimore; DONALD W. O'CONNELL, Individually and Vice President for General Administration of the University of Maryland; UNIVERSITY OF MARYLAND; STATE OF MARYLAND,

O R D E R

By unpublished per curiam opinion on May 8, 1990, this Court granted appellees' motion for sanctions in the form of single costs and attorney's fees. Appellees have filed an itemized statement of costs and fees and appellant has filed a response in opposition to appellees' submission. Appellees have supplemented their application for attorney's fees with an affidavit in support of one of the attorney's requested hourly rate.

Appellant does not dispute the amounts requested by appellees, but challenges the Court's decisions to grant sanctions against him. Having reviewed appellees' submissions regarding attorney's fees and costs, it appears that the amount of time expended by appellee's counsel on this case is reasonable and the hourly rates are appropriate.

Accordingly, IT IS ORDERED that, pursuant to this Court's opinion of May 8, 1990, appellees are awarded sanctions in the form of single costs

and attorney's fees for the requested amount of $2,460.60. The parties are reminded of the provision of Local Rule 27(c) which allows any party adversely affected by an order entered by the Clerk to request reconsideration of the Clerk's action by filing in the Office of the Clerk within 14 days after the entry of the order a request for reconsideration, vacation or modification of order, stating the grounds for such request.

For the Court - By Direction

/s/John M. Greacen
Clerk

APPENDIX I
1 of 25 Pages

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CURTIS L. WRENN,

Plaintiff-Appellant,

vs Case No 89-1080

G. BRUCE McFADDEN, et al.,

Defendants-Appellees.

REQUEST FOR RECONSIDERATION OF THE CLERK'S ORDER OF JUNE 15, 1990

I. INTRODUCTION (ISSUES)

1. The primary issue before the court and the basis for the appellant's argument and his urgent request for reconsideration is the denial by the district court in HAR-82-2044 of the following motions:

> Motion for Recusal (of Judge John R. Hargrove). The second such recusal motion submitted by the appellant.
>
> Motion for Postponement and for Clarification of Trial Procedure.

The secondary issue is whether the court abused its discretion in imposing sanctions on the appellant for appealing the district court's denials. In his

motion for sanctions, the counsel for the appellees has not demonstrated that the appeal resulted from conduct that is "unreasonable, vexatious, or without foundation." The appellees' argument is that the decision of the district court is not appealable. This court apparently agreed without citing any basis for deciding that the Motion for Clarification was not appealable. This decision goes in face of Regents of University of Cal. v. Bakke (1978) US 265, 57 L Ed 2d 750, 98 S. Ct 2733, where Justice Marshall states:

> "It is unnecessary in 20th century America to have individual Negroes demonstrate that they have been victims of racial discrimination; the racism of our society has been so pervasive that nothing, regardless of wealth or position, has managed to escape its impact. The experience of Negroes in America has been different in kind, not just in degree, from that of other ethnic groups. It is not merely the history of slavery alone but also that a whole people were marked as inferior by the law. And that mark has endured. The dream of America as the great melting pot has not been realized for the Negro; because of his skin color he never even made it into the pot". (at 400-401).

II. BACKGROUND

2. This case has its origin in the appellant's

allegation that his discharge from the position of Associate Director by the Appellee McFadden, was in contravention of the Constitution and laws of the United States, including, but not limited to, the First and Fourteenth Amendments, and 42 USC 1981, 1983 2000d and 2000e.

3. Following his discharge Wrenn informed the Office for Civil Rights by letter dated March 3, 1978 that "I believe I and other similarly situated employees have been discriminated against because of our race (Negroid). That is, the University of Maryland Hospital has denied us comparable wages for performing work similarly to that of white employees." See Exhibit 1, page 1. In addition to contacting the Office of Civil Rights, the appellant by letter of June 3, 1978 to Dr. Albin O. Kuhn, Chancellor asked him to "Conduct an impartial hearing to permit the fulfillment of the constitutional rights guaranteed by the due process clause of the Fourteenth Amendment to the U.S. constitution." Exhibit 2, page 2.

4. OCR, on March 17, 1978 acknowledged receiving

the appellant's letter of March 3, 1978. In response to that letter, the appellant filed the form at Exhibit 1, page 12. Among other things, the appellant alleged that "The University Hospital still, however, has an institutionalized practice of paying Blacks and females less than white males, for comparable work." The form was mailed to OCR and the EEOC, the latter acknowledged receiving the charge on May 30, 1978. The Maryland Commission on Human Relations was informed on June 5, 1978 by the EEOC that "a charge of employment discrimination initially received by the EEOC on 05/30/78. Pursuant to the work-sharing agreement, this charge is to be initially processed by the EEOC." See Ex 1, p. 17. The EEOC "perfected" the charge on its form on or about July 5, 1978 and included at paragraph IIIa. that "The University has a practice of paying blacks and females less than white males for comparable work;"

5. The EEOC rendered its Determination and the appellant filed this action in the district court. The initial Complaint and applicable subsequent

pleadings are at Exhibit 3.

6. Applicable decisions of the district court and this court are at Exhibit 4. The relevant facts in plaintiff's complaint are set forth in the written pleading and in the incorporated written exhibits. Under Federal Rules of Civil Procedure 10(c), such exhibits are a part of the pleading for all purposes. Incorporated exhibits must be considered a part of the pleading for the purpose of determining the sufficiency of a complaint. Foshee v. Daoust Const. Co., 185 F.2d 23 (CA Ind. 1950). Based on the pleadings and exhibits, the holding of the district court and the decision of this court were clearly erroneous, in that the decisions are not supported by the record on which the holding were allegedly based.

III. REASONS FOR GRANTING RECONSIDERATION

7. The request for reconsideration should be granted because this case from its inception is replete with decisions that were not based on the facts in the case. In addition, the decisions by the district court were contrary to previous

decisions made by that court in the following:

Kissi v. Wriston, Civil No JH-82-3762, December 30, 1983 at page 7.

McAdoo v. Toll, Civil No Y-82-1770, August 20, 1985, page 3.

Soble v. Univ. of Maryland, Civil No M-83-290, May 9, 1984, especially page 26 and 27 which is VERY similar to the case at bar.

The decisions by this court were also contrary to previous decisions of the court, the other courts of appeals and the Supreme Court. The appellant's basis for submitting his Recusal Motion and his Motion for clarification was his attempt to clarify the issues to be tried in this case and to have the present presiding judge removed so that he (the appellant) would have a chance at a fair trial. The appeal was also submitted in response to decisions by the two courts which were contrary to current case law. The essence of the appellant's arguments and the basis for this request for reconsideration in this case are as follows:

a. TIMELY CHARGE FILING. The court has

ruled that the charge at Exhibit 1 was not timely. This ruling is clearly erroneous. A review of Exhibit 1, especially pages 1, 16, and 18 clearly demonstrate that the charge was not based on one isolated incident but rather an entire allegedly discriminatory system is being challenged. See, e.g., Macklin v. Spector, Case Nos. 71-1259, 71-1517 and 71-1620, CA DC, May 1973.

b. JURISDICTION UNDER TITLES VI AND VII. The decisions that the district court did not have jurisdiction because allegedly the appellant did not file a timely charge with the EEOC, is clearly erroneous and an abuse of discretion. A legion of decisions by the other courts of appeals and the Supreme Court hold that the timely filing of a charge with the EEOC is NOT a jurisdictional prerequisite and that the application of equitable tolling principles should apply. This is especially true in this case considering the correspondence at Exhibit 1, esp. pages 1, 5-6, 7-8, and more especially page 10. See, e.g., Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 102 S. Ct. 1127, 71

L.Ed.2d 234 91982). See also, Thornton v. Chrysler, Docket No K-82-3320, 581 F. Supp. 86 (US DC D.MD 1983). The court should have held that Ex 1, p. 1-16 was a timely filing with the EEOC under equity. Moreover, charges filed with the EEOC should be construed liberally. Wrighten v. Metropolitan Hospitals, Inc., 726 F.2d 1346 (CA Or 1984).

c. ALLEGED FAILURE TO PRESENT RETALIATION CLAIM. The appellant's retaliation claim is based on the facts at Exhibit 1, pages 1-16. These facts clearly demonstrate that the reprisal against Wrenn which resulted in the termination of his employment constitutes a violation of Title VII. Pettway v. American Cast Iron Pipe Co., 411 F.2d 998 (5th Cir. 1969), reh. den., 415 F.2d 1376 (5th Cir. 1969). Section 704(a) is not confined to situations in which the parties are engaged in formal proceedings, but rather extends to forbid "discrimination against applicants or employees for attempting to protest or correct allegedly discriminatory conditions of employment." McDonnell Douglas Corp., v. Green, 411 U.S. 792, 796, 93 S. Ct. 1817, 1821, 36 L.Ed.2d 668

(1972). See also, Soble v. Univ. of Maryland, No. M-83-290, where the courts states at page 26:

> "The Fourth Circuit has recognized that to fall under the protection of the "opposition clause" in Section 704(a), the plaintiff need not have leveled formal charges of discrimination but that such informal protests as voicing complaints to employers or using an employer's grievance procedures will suffice. Armstrong v. Index Journal Co., 647 f.2d 441, 448 (4th Cir. 1981)".

The dismissal of appellant's retaliation claim, allegedly because he did not present such a claim to EEOC was clearly erroneous, in that it was contrary to current case law and the facts in the case. See Exhibit 1, page 1 where the appellant states to OCR "Enclosed please find correspondence pertaining to my efforts to obtain equal pay for equal work. As a result of asking for a salary adjustment, and after I refused to resign, I have been fired. See also Exhibit 1, pages 2-4, 9-10, 15-16 and 23. "Courts have continuously construed Title VII so as not to allow procedural technicalities to bar a claim under the Act." Wetzel v. Liberty Mutual Insurance Co., 511 F.2d 199, 202 (3d Cir. 1975). Also, "Were we to interpret the statue's procedural prerequisites

stringently, the ultimate result would be to shield illegal discrimination from the reach of the Act." Eglelston v. State University College at Geneseo, 535 F.2d 752 (2d Cir. 1976). See Egelston, supra, for the holding that filing with the Labor Department is equitable equivalent of filing with the EEOC. In the case at bar, the correspondence at Exhibit 1 (pages 1-16) clearly demonstrate equitable tolling in this case. Moreover, page 1 of Exhibit 1 clearly demonstrate the timely filing a charge, albeit the wrong federal agency. The retaliation claim should have been accepted by the court on the principle of "like or reasonably related to the allegation of the charge and growing out of such allegation during the pendency of the case before the Commission." Sanchez v. Standard Brands Inc. (CA 5 1970), 2 FEP Cases 788. Other courts have held that the civil complaint may include "any discrimination like or reasonably related to the allegations of the EEOC charge." Oubichon v. North American Rockwell Corporation, 482 F.2d 569, 571, (9th Cir. 1973). Finally, the appellant need not

allege the exhaustion of administrative remedies in order to pursue his retaliation claim. See, e.g., Gupta v. East Texas State University, 654 F.2d 411, 414 (5th Cir. 1981).

d. CONTINUING PATTERN AND PRACTICE DISCRIMINATION. Where as here the alleged violation is in the nature of a continuing discriminatory action (the maintenance of the appellant in racially discriminatory wage system), and employment continued until July 1, 1978 and charge was filed on March 3, 1978, was deferred to state agency on June 5, 1978, would not bar an action on alleged unlawful discharge. The decision to deny appellant's discharge claim was clearly erroneous, in that it was contrary to decisions of this court, the other courts of appeals and the Supreme Court. The doctrine of continuous discrimination has been applied in actions involving patterns or practices of discrimination (Ex 1, 1-10, 15-16, and 18), such as the maintenance of discriminatory hiring or wage systems. The seminal decision is United Airlines v. Evans 431 U.S. 553, 558, 97 S. Ct. 1885, 1889, 52

L.Ed.2d 571 (1977). See also, Held v. Gulf Oil Co., 684 f.2d 427 (6th Cir. 1982). Also see, Hill v. AT&T Technologies, Inc. 731 F.2d 175 (4th Cir. 1984), where this court held "In order to apply the continuing violation theory in order to justify late filing of EEOC charges, there must be a present violation within the required time period; Jenkins v. Home Ins. Co., 635 f.2d 310 (4th Cir 1980).

e. TITLE VI CLAIMS. the court dismissed appellant's Title VI claim, allegedly because of the three year statute of limitations of the State of Maryland. This decision was rendered despite the fact that the evidence in the case (Ex 1) clearly demonstrates that the responsible federal agency did not render its decision until January 29, 1986. More importantly, this court was aware at the time it rendered its decision that the appellant had exhausted his required administrative remedies, albeit AFTER the district court's decision BUT before this court rendered its decision. See, e.g., Cannon v. University of Chicago, 441 U.S. 677,730, 99 S. Ct. 1946, 1974-1975, 60 L.Ed.2d 560 1979).

See also, Maine v. Thiboutot, 448 U.S. 1, 100 S. Ct. 2502, 65 L.Ed.2d 555 (1980).

f. CONSTITUTIONAL CLAIM - FIRST AMENDMENT. The First Amendment "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." Roth v. United States, 354 U.S. 476, 484 91957). The Supreme Court has frequently reaffirmed that speech on public issues occupies the "highest rung of the hierarchy of First Amendment falues, and are entitled to special protection. NAACP v. Clairborne Hardware Co., 458 U.S. 886, 913 (1982). The court "apparently" dismissed appellant's first amendment claim, despite the fact that in its order there was no mention of this claim. Thus the court's decision was clearly erroneous, in that it is generally accepted that for the purposes of ruling on a motion to dismiss, all allegations contained in plaintiff's complaint must be construed in a light most favorable to plaintiff, and allegations must be taken as true. Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 40 L.Ed.2d 90

(1974). It is undisputed that the appellant was exercising his right of free speech when he submitted his request for pay adjustment (Ex. 1, p. 204). Seminal decision is Givhan v. Western Line Consol. School, 99 s. Ct. 693 (1979), where the Court held "constitutional freedom of speech is not lost to a public employee merely because he arranges to communicate privately with his employer rather than to spread his views before the public." This court has previously held that "Public employee may not be discharged for expression of ideas on any matter of legitimate public concern, whether in public forum or in private conversation with employer ..." Jones v. Dodson, 727 F.2d 1329 (4th Cir CA 1983).

g. CONSTITUTIONAL CLAIM - FOURTEENTH AMENDMENT. Likewise the court "apparently" dismissed the appellant's fourteenth amendment claim, despite the fact that in its order there was no mention of this claim. It is undisputed that when a government employee's position is classified as "permanent" (as in this case following the

appellant's completion of the required probationary period), statutory right to warrant federal procedural safeguarding is warranted. It is also undisputed that "The Fourteenth Amendment prohibits salary differentials on the basis of race or color between white and black public employees. such differentials are constitutionally impermissible whether they result from legislation or quasi-legislation, such as administrative salary schedules or from administration." Reynolds v. board of Public Inspection, 448 F.2d 754 (CA 5 Fla), cert. deh. 326 U.S. 746 90 L.Ed. 446 66 S. Ct. 54. The correspondence at Exhibit 2 clearly demonstrate that the appellant was informed the "I must inform you that the Personnel Policies and Rules for Associate Staff Employees of the University of Maryland does not provide for a hearing in your case." Thus it is unrefuted that the appellant was denied his constitutional right of due process. See Tupper v. Fairview Hospital Center, M.H.D., 540 P2d 401 (1975) where the court held "dismissal without a pretermination hearing violated due process."

h. CONTINUING ABUSE OF DISCRETION BY THE COURT. The following Decisions clearly demonstrate abuse of discretion by the courts:

(1) Granting of summary judgment and/or dismissal of the appellant's constitutional claims under the First and Fourteenth Amendments. Quoting form page 526 of Moore's Federal Practice, Federal Civil Rules, 1990, Part I:

> "Complicated cases and cases involving constitutional or other important public issues are further examples where summary adjudication may, as a general proposition, be undesirable. See Board of Education, island Trees Union Free School District No. 26 v. Pico, 457 U.S. 853, 102 S. Ct. 2799, 73 L. Ed. 2d 435 (1982) (In a civil rights action challenging a schools board's removal of certain allegedly offensive books from school libraries, the court of appeal reversed a grant of summary judgment for a trial on whether the

board's decision was motivated by constitutionally permissible justification or by an impermissible desire to suppress ideas, violative of the first amendment.)"

(2) Refusal to consider the findings of the EEOC at Exhibit 1. Although the findings of the EEOC are not binding upon the federal courts, those findings are entitled to some weight. See, e.g., Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205, 210, 93 s. Ct. 364, 367, 34 L.Ed. 2d 415 91972); Plummer v. Western International Hotels Co., Inc., 26 FEP 1292 (9th Cir 1981); Blizzard v. Fielding, 17 FEP 149 (1st Cir. 1978); and General Electric Co. v. Gilbert, 429 U.S. 125, 97 S. Ct. 401, 50 L.Ed.2d 343 (1976) (EEOC's interpretation entitled to "great deference"".

(3) Denial of motion to amend. As stated by the United States Supreme Court in Foman v. Davis, 371 U.S. 178, 9 L.E. 2d 222, 83 S. Ct. 227 (1962), construing that rule of procedure:

"If the underlying facts or circumstances

relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits."

See also, Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330, 91 s. Ct. 795, 802, 28 L.Ed.2d 582 (1971). The appellant filed his motion to amend to "cure" the defects created by the erroneous decisions by the courts regarding his Title VII claims (retaliation and discharge and his Title VI claim. Justice requires that the appellant not be denied the opportunity to pursue these claims, on the basis of the timely filed administrative complaints at Ex. 1, which claims demonstrate continuing pattern or practice discrimination (denied of equal pay for comparable work).

(4) Denial of recusal motions. The court has denied the appellant motions to remove the presiding judge who evidence bias and prejudice against the petitioner. Such bias and prejudice would violate the appellant right to a fair and

impartial trial. The appellant filed two motions, properly supported by sworn affidavits, pursuant to 28 USC 144. Both motions were denied. The district court's decisions were upheld by this court. The decisions were contrary to decisions by the other courts of appeals. See, e.g., Crowder v. Conlan, (6th Cir. 1984), 740 F.2d 447, 453 and the cases cited therein.

(5) Denial of Motion for Postponement and for Clarification of Trial Procedure. This motion was the appellant's second attempt (the first being the motion to amend) to have the court state (1) the issues to be tried in this case, and (2) clarification of the decisions rendered in this case. Since the court has NOT articulated the basis and/or reason for denying the motion, the court is respectfully asked, pursuant to Rule 2 of the Federal Rules of Appellate Procedure, to suspend the provisions of any and all other Rules in order to reconsider and render a definitive decision in response to the appellant's motion. There exists a substantial basis for a difference of opinion on the

question of whether the denial of this motion is immediately appealable. Appellant submits that it is, primarily because a decision by the court will materially advance the termination of this litigation which has been pending for eight years.

(6) Denial of appellant discharge claim, allegedly because his charge was not timely filed with the EEOC. Whether or not an EEOC charge is timely filed is determined by the date on which the charge is received by the Commission. See Cacchione v. Erie Technological Products, Inc., 28 EPD 24, 167, citing 29 CFR 1601.13(a). In the case at bar the plaintiff filed his original charge of "retaliatory discharge" (Ex 1, p 1) on or about March 3, 1978 (albeit the wrong Federal agency, e.g., the U. S. Department of Health, Education and Welfare (now the U.S. Department of Health and Human Services (DHHS)) (Ex 1, p 1-15). The EEOC acknowledged receiving the charge on May 30, 1978. The charge was referred to the Maryland Commission on Human Relations on June 5, 1978 (Ex 1, p 17). The appellant submits that the charge was timely, in

that it was filed well within the allowable 300 days. The circumstances in this chase are similar to those in Egelston v. State University College at Geneseo (CA 2 1976), 12 FEP Cases 1484, where the court held "The filing of a charge with the Office of Federal Contract compliance constitute the filing of a charge with the EEOC." Thus the charge filed at Ex 1 was timely, in that it was filed with DHHS. See Exhibit 1, where the letter of 20 Sep 1983 from DHHS to the appellant regarding another case clearly demonstrates "If the complaint is sent to EEOC for investigation, it will be deemed a charge received by EEOC on the same date as it was received by this agency unless it was received earlier by EEOC." Also, see the Supreme Court's decision in EEOC v. Commercial Office Products Company, cert granted, Case No 8601696, 56 LW 4424-56 LW 4429 (May 1988) at Exhibit 6. This decision, when read with other applicable decisions regarding filing requirements, clearly indicates:

A charge is considered filed with the Commission when received by DHHS and/or a state or

local agency.

The 300 day clock runs from the date the charge is received by the Commission (e.g., DHHS and/or a state of local agency).

Equitable tolling should have been applied in this case, IF the court rejected these arguments.

(7) The court misapplied the Supreme Court's decision in Delaware State College v. Ricks, Case No 79-939, (December 1980), a copy of which is at Exhibit 7. The decision clearly states "If Richs intended to complain of a discriminatory discharge, he should have identified the alleged discriminatory acts that continued until, or occurred at the time of, the actual termination of his employment." In the case at bar, Wrenn clearly alleges that he was denied equal pay, was fired when he requested a salary adjustment, and that he was continued in that discriminatory wage system until July 1, 1978 OR after he filed the charge of discrimination at Exhibit 1.

CONCLUSION

1. The issues before the court concern the appealability of the district court's denial of Motion for Clarification and the court's authority to impose sanctions. The latter concerns whether the courts of appeals in a civil rights action have authority to order appellant to pay legal fees of his opponent under Rule 11 and its standards, or is awarding fees in an action such as this controlled by Civil Rights Attorney's Fee Award Act, and the standards enunciated in Christainburg v. Garment Co. v. EEOC, 434 U.S. 412 (1978).

2. This case turns on the unanswered question of whether the appellant's appeal, especially his Motion for Clarification is reasonable under the circumstances. In arriving at its decision, the appellant submits that the court should apply an "objective standard of reasonableness" in determining weather this appeal is reasonable under the circumstances. See, e.g., INVST Financial Group, Inc. v. Chem-Nuclear Systems, Inc., 815 F.2d 391 (6th Cir.), cert. denied, 108 S. Ct. 291 (1987):

Community Elec. Service v. National Elec. Contr., 869 F.2d 1235 (9th Cir. 1989).

3. The denial of reconsideration in this case would be tantamount to telling future litigants that they CANNOT appeal decisions which they disagree AND more importantly, if they do they will be subjected to the penalty of sanctions, notwithstanding applicable decisions of the Supreme Court OR any other court. This is especially significant in a case such as this when the appeal is based on the appellant's best knowledge, information, and belief, formed after thorough inquiry and the arguments advanced ware well grounded in fact and is warranted by existing law and/or a good faith argument for the extension, modification, or reversal of existing law, and that the appeal WAS NOT interposed for any improper purpose.

WHEREFORE, the appellant prays that this case will be reconsidered, and following reconsideration the court will (1) deny the motion for sanctions, and (2) will issue clarifying instructions regarding the Motion for Clarification an articulate the issues to

be tried by the district court.

Respectfully submitted,

/s/Curtis L. Wrenn
Curtis L. Wrenn, Pro Se
P.O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-7817

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to Robert B. Barnhouse, Esq. 1100 Charles Center South, 36 S. Charles Street, Baltimore, MD . 21201, via U. S. mail, postage prepaid, on this 27th day of June, 1990

/s/Curtis L. Wrenn

APPENDIX J (with attachments)
1 of 14 Pages

P. O. Box 203
Fort Drum, NY 13603
July 11, 1990

Honorable John M. Greacen, Clerk
U. S. Court of Appeals
Tenth and Main Streets
Richmond, VA 23219

RE: Wrenn v. McFadden, et al., Case No 89-1080

Dear Mr. Greacen:

Please accept this as my reply to the counsel for the appellees' letter of July 5, 1990.

The counsel for the appellees would have this court believe that the appellant "does not take issue with the Clerk's June 15, 1990, order." This statement, like so many made by the counsel for the appellees is simply not true. I Respectfully submits that I have and continue to take issue with EVERY order issue by the Clerk and/or by the Court in this case.

In that connection, the facts are the appellant has repeatedly argued and/or requested the courts to consider valid claims in the course of the

proceedings in this case. For reasons now known to him, this court has steadfastly refused to comment and/or render a decision and/or respond to the appellant's various arguments and/or inquiries concerning the following:

a. The disposition of the appellant's constitutional claims: denial of due process hearing, in violation of the fourteenth amendment, and employment termination, in retaliation for the appellant's exercise of his First Amendment right when he requested a salary adjustment.

b. This court's unilateral dismissal of appellant's Title VI claim, allegedly because of the Maryland's three-year statute of limitations, despite the fact that the claim was still being administratively reviewed by the responsible Federal agency.

c. The decision by the courts that the appellant's discharge claim was untimely. This

decision was rendered despite this court's holding AT THE SAME TIME that the appellant was a victim of a "continuing violation" based upon a "present violation" (Bi-weekly paycheck in which a Negroid person was paid less than a Caucasian doing similar work). This fact, coupled with a legion of court decisions regarding the "300-day" filing rule in deferral states vs the "180-day" rule, clearly and unquestionably demonstrate that the discharge claim was timely filed when it was filed on or about march 3, 1978, in connection with the employment termination notice of July 11, 1978.

It is becoming increasingly apparent in this case that the courts have a tendency to accept, without ANY apparent review of the facts or governing legal theory, any and all arguments and/or allegations advanced by the appellees and their counsel. What is also apparent is that for whatever reason, whether it is because of the appellant's race or

because he is a pro se litigant, the court has REFUSED to respond to the issues and/or questions presented by him. As a result, the appellant has had to repeatedly attempt to "cure" and/or correct the decisions of the court, on the ground that the decisions of this court resulted from either an erroneous interpretation of the law or a misapprehension of the facts in the case.

Because he no longer believes the actions of the court resulted from an erroneous interpretation of the law or a misapprehension of the facts, but rather a deliberate refusal to review and/or consider the laws governing the facts presented by the appellant, the appellant has had to resort to repeatedly presenting, at great expense, the same facts AND copies of the governing court decisions. So far this too has not changed the decisions of the courts NOR has the court responded to the facts presented.

For example, the appellant filed a second motion for summary judgment in the district court (the first motion was dismissed, allegedly because no discovery had been had in this case). The appellee, by letter, argued that the district court did not have jurisdiction because allegedly the Supreme Court had not decided the appellant's petition for writ of certiorari. The district court granted the motion WITHOUT any review of the facts, and more importantly without giving the plaintiff an opportunity to respond to what he knew to be a clearly false statement, which the counsel for the defendants knew or should have known was false. As a result, the plaintiff has filed a third motion for Judge Hargrove to remove himself from this case pending in the district court, because he has exhibited bias in favor of the defendants. The latest was just another example of Judge Hargrove, like this court, rendering a decision in favor of

the employer WITHOUT any facts whatsoever to support the decision. See Exhibit "1.

Based on the foregoing, the appellant submits that there is clear and convincing evidence that this court and the district court have rendered decisions in favor of the appellees and against the appellant which are not supported by the facts or the applicable case law. The decision includes but are not limited to the recent decision awarding the appellees attorney fees WITHOUT showing how the denial of plaintiff's Motion for Postponement and for Clarification of Trial Procedure is somehow NOT a final order and/or that the denial of that motion is not appealable.

Accordingly, the appellant ONLY apparent recourse is to again ask the court to review ALL the facts in this case, to apply governing prior decisions of this court, the other courts of appeals, and the Supreme Court to the issues presented herein, and to

render an opinion and/or finding which explains HOW the various attempts by the appellant to have this court correct OBVIOUS errors is somehow frivolous.

Very truly yours,

/s/Curtis L. Wrenn

Enclosure

cc: Robert B. Barnhouse

CERTIFIED MAIL P094017353

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CURTIS L. WRENN,

Plaintiff,

vs

G. BRUCE McFADDEN, ET. AL.,

Defendants.

Case No.
82-HAR-2044
JUDGE HARGROVE

MOTION FOR
RECUSAL

COMES NOW the plaintiff, pursuant to 28 USC 144, and moves Judge John R. Hargrove to remove himself from this case on the basis of demonstrated personal bias. This is the plaintiff's third request for Judge Hargrove to be removed from this and any other actions he may file. In support of his motion, the plaintiff incorporates Exhibits 1, 2, and 3. The latest (Ex 3) clearly demonstrates an abuse of discretion when Judge Hargrove granted the defendant's request, despite a clear showing that the request was unfounded and was clearly maliciously false.

WHEREFORE, plaintiff prays this motion will be granted.

Respectfully submitted,

/s/Curtis L. Wrenn
P. O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-7817

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed t Robert B. Barnhouse, 36 South Charles St., Baltimore, MD, Jun 30, 90.

/s/Curtis L. Wrenn

Piper & Marbury
1100 Charles Center South
36 South Charles Street
Baltimore, Maryland 21201-3010
301-539-2530
Facsimile 301-539-0489
Cable Pipermar Bal
Telex 908054

Writer's Direct Number
(301) 576-1288

1200 Nineteenth St.
Washington, D.C. 20036
202-861-3900

June 21, 1990

HAND DELIVERED

The Honorable John R. Hargrove
United States District Judge
United States District Court
for the District of Maryland
U.S. Court House - Room 520
101 W. Lombard Street
Baltimore, Maryland 21201

Re: Wrenn v. McFadden, et al.
Civil Action No. HAR-82-2044

Dear Judge Hargrove:

Robert B. Barnhouse and I represent the defendants, G. Bruce McFadden and the University of maryland Medical System Corporation, in the above-referenced case.

On June 14, 1990, Mr. Barnhouse received a copy of Mr. Wrenn's Motion for Leave of Court to File his Motion for Summary Judgment in his Favor.

Subsequently, I contacted your clerk, Sue golden, who informed me that the Court does not have jurisdiction to consider Mr. Wrenn's motion while his petition for writ of certiorari in Case No. 89-1256 is pending before the U.S. Supreme Court. Further, Ms. Golden indicated that, after the Supreme Court decides the petition, this Court will issue a scheduling order concerning all pre-trial matters, including a briefing schedule for the summary judgment motion. consequently, defendants will not respond to Mr. Wrenn's motion until they are requested to do so by this Court.

I stand ready to answer any questions that the Court may have about this matter.

Yours truly,

/s/Stephen B. Lebau

SBL:sar

cc: Mr. Curtis L. Wrenn

P.O. Box 203
Fort Drum, NY 13603
June 24, 1990

Honorable John R. Hargrove
United States District Judge
United States District Court
U. S. Court House - Room 520
101 West Lombard Street
Baltimore, MD 21201

RE: Wrenn v. McFadden, et al., HAR-82-2044

Dear Judge Hargrove:

Please accept this as my response to the letter of June 21 1990 from Stephen B. Lebau regarding the above captioned case.

The Court and the counsel for the defendants are acutely aware that my petition for writ of certiorari in Case No. 89-1256 was denied by the Supreme Court.

Accordingly, this is to respectfully renew my motion for summary judgment. In that connection, the Court should not condone the defendants' stalling tactics as it did in my previous motion for summary judgment. Upon receiving that motion the court ordered the defendants to respond by a date certain, and when the defendants did not respond the

Court denied my motion allegedly because no discovery had been conducted in this case. It should be noted that the Court's decision to dismiss this case on may 24, 1985 was rendered WITHOUT the benefit of ANY discovery. Therefore the Court should render a decision in this case pursuant to Rule 56(c) of the Federal Rules for Civil Procedure.

Very truly yours,

/s/Curtis L. Wrenn

cc: Clerk, Supreme Court of the United States
Stephen B. Lebau, Esq.

CERTIFIED MAIL P382547232

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

March 26, 1990

Mr. Curtis L. Wrenn
P.O. Box 203
Ft. Drum, Ny 13603

Re: Curtis Wrenn
v. G. Bruce McFadden, individually and as Director, University of Maryland Hospital, et al.
No. 89-1256

Dear Mr. Wrenn:

The Court today entered the following order in the above entitled case:

The petition for writ of certiorari is denied.

Very truly yours,

/s/Joseph F. Spaniol, Jr.,
Clerk

CURTIS L. WRENN
4006 LOCH RAVEN BLVD., BALTIMORE, MARYLAND 21218

March 3, 1978

Office for Civil Rights
Department of Health, Education and Welfare
3535 Market Street
Philadelphia, PA 19101

Dear Sir/Madam:

Enclosed please find correspondence pertaining to my efforts to obtain equal pay for equal work. As a result of asking for a salary adjustment, and after I refused to resign, I have been fired.

I believe I and other similarly situated employees have been discriminated against because of our race (Negroid). That is, the University of Maryland Hospital has denied us comparable wages for performing work similarly to that of white employees.

Please advise me regarding what, if any, additional

information and/or forms you need to consummate this complaints.

Very truly yours,

/s/Curtis L. Wrenn

Enclosures

UNIVERSITY OF MARYLAND HOSPITAL

22 SOUTH GREENE STREET
BALTIMORE, MARYLAND 21201

OFFICE OF THE DIRECTOR

June 27, 1977

Mr. G. Bruce McFadden
Director
University of Maryland Hospital

Dear Mr. McFadden:

This is in response to your presentation at the Associate Director's Meeting of June 24, 1977, during which you discussed your revised organizational chart.

This is to let you know I will support your stated purpose, that is "a need to streamline the organization". I say this even though my role, as defined by you, would change significantly. In essence what I am saying, I will continue to support our efforts to provide quality patient care in a cost effective manner.

I would like, however, to mention one aspect of your change which is causing me some grave concern. On condition of my acceptance of my present position was that the three Associate Directors would be at the same salary level. I have since learned that the salary approved for the two other Associates will be substantially higher than mine effective July 1, 1977.

In your discussion of proposed organizational change, you did not mention salaries. I request that the subject of salaries be considered an integral part of any discussion regarding organizational structure. In this connection, I am by this letter requesting that my salary be adjusted to a level of not less than the highest paid of the other Associates. It is further requested that this adjustment be made effective July 1, 1977.

Very truly yours,

/s/Curtis L. Wrenn

Associate Director

CLW/cdt

UNIVERSITY OF MARYLAND HOSPITAL

22 SOUTH GREENE STREET
BALTIMORE, MARYLAND 21201

OFFICE OF THE DIRECTOR

July 11, 1977

Mr. Curtis L. Wrenn
Associate Director for Administration
University of Maryland Hospital

Dear Curtis:

This will serve to summarize our discussion from our meeting this morning, July 11, 1977.

In keeping with the Personnel policies of the University of Maryland for Associate Staff, you are hereby given notice that your employment will be terminated in nine months from this date.

During the interim period, you will be expected to perform all assigned duties in a manner consistent with the position, under the existing, or proposed organizational, framework of the Director's Office.

Your last date of employment will be April 11, 1978, unless you wish to submit your termination earlier.

Sincerely yours,

/s/G. Bruce McFadden

Director

MLB/gbm

UNIVERSITY OF MARYLAND HOSPITAL

22 SOUTH GREENE STREET
BALTIMORE, MARYLAND 21201

OFFICE OF THE DIRECTOR

July 11, 1977

Mr. Curtis L. Wrenn
Associate Director for Administration
University of Maryland Hospital

Dear Curtis:

This will respond to your letter of June 27, 1977 regarding salary adjustment, and so summarizes my comment from this morning.

Your request for a salary adjustment is not approved. In keeping with your request, however, this note will serve as a request to the Director of Personnel, Mr. Ronald J. Baril, to more closely examine these second-level salary components, and advise me officially as to the nature of our current levels as being in keeping with other hospital institutions.

You should feel free to discuss this with Mr. Baril at your convenience.

Sincerely,

/s/G. Bruce McFadden

Director

MLB:gbm

cc: Mr. Ronald J. Baril

Director of Personnel

APPENDIX L
1 of 3 Pages

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
REGION 111
3535 MARKET STREET
Philadelphia, Pennsylvania 19101

Mar 17 1978

Office of the Secretary
Office for Civil Rights

Mailing Address
P.O. Box 13716
Philadelphia
Pennsylvania 19101

Mr. Curtis L. Wrenn
4006 Loch Raven Road
Baltimore, MD 21218

Dear Mr. Wrenn:

This will acknowledge our March 3, 1978, receipt of your letter in which you alleged that you and certain other similarly situated individuals have been discriminated against on the basis of race. Additionally, you requested information concerning forms and procedures in order that you might file a complaint against your employer.

The Office for Civil Rights has responsibility for enforcing (1) Executive Order 11246, as amended, which prohibits employment discrimination on the

basis of race, color, religion, sex, or national origin, by Federal contractors or subcontractors and contractors or subcontractors performing on Federally-assisted construction projects; (2) Title VI of the Civil Rights Act of 1964, which prohibits discrimination in the provision of services on the basis of race, color, or national origin in Federally assisted programs. Title VI also prohibits discrimination in employment in some circumstances.

We have enclosed an employment discrimination complaint form for your use should you wish to file a complaint. When completed, your complaint should include the following information:

(1) your name and address;

(2) a general description of the person(s) or class of persons injured by the alleged discrimination (names of the injured person(s) are not required)

(3) an identification of the institution or agency alleged to have discriminated in sufficient detail to enable OCR to understand

what discrimination occurred, when it occurred and the basis or motivation for the discrimination (race, sex, handicap, color, national origin).

Pursuant to the Privacy Act of 1974, we are enclosing two copies of the Notification Form which sets forth the obligations of this agency, and one copy of the Complainant's Consent Form for Disclosure. Kindly complete these forms and return them to us as soon as possible. In the meantime, if you have any questions, please do not hesitate to contact Ms. Barbara Ann Rosenberg, Chief, Program Evaluation and Management Support Branch at Area Code (215) 596-6791.

Sincerely yours,

/s/Dewey E. Dodds
Dewey E. Dodds, Director
Office for Civil Rights
Region III

Enclosures

APPENDIX M

UNIVERSITY OF MARYLAND HOSPITAL
22 SOUTH GREENE STREET
BALTIMORE, MARYLAND 21201

OFFICE OF THE DIRECTOR

April 3, 1978

Mr. Dewey E. Dodds, Director
Office of Civil Rights, Region III
P. O. Box 13716
Philadelphia, Pennsylvania 19101

Dear Mr. Dodds:

Please send us a copy of the "six standards" EEOC will be using in assessing whether practice and pattern discrimination exists.

We are enclosing a copy of the article from the March 20, 1978 edition of the Wall Street Journal. This article was our first knowledge that any "guidelines" were being developed by the U.S. Equal Employment Opportunity Commission.

Sincerely,

/s/Curtis L. Wrenn
Curtis L. Wrenn, M.H.A.
Associate Director for
Administration

CLW/jmcn
Enclosure

APPENDIX N
1 of 2 Pages

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
REGION 111
3535 MARKET STREET
Philadelphia, Pennsylvania 19101

May 1 1978

Office of the Secretary
Office for Civil Rights

Mailing Address
P.O. Box 13716
Philadelphia
Pennsylvania 19101

Mr. Curtis L. Wrenn
Associate Director for Administration
University of Maryland Hospital
22 South Greene Street
Baltimore, maryland 21201

Dear Mr. Wrenn:

This will acknowledge receipt of your april 3, 1978 letter requesting information on Equal Employment Opportunity Commission (EEOC) standards for assessing the existence of patterns or practices of employment discrimination.

The EEOC is not an agency of the Department of Health, Education and Welfare. Accordingly, we are referring your letter to:

Mr. Walter Dickerson
Equal Employment Opportunity Commission
Rotunda Building - Room 210
711 W. 40th Street
Baltimore, Maryland 21211

Sincerely yours,

/s/Dewey E. Dodds
Dewey E. Dodds, Director
Office for Civil Rights
Region III

EMPLOYMENT DISCRIMINATION COMPLAINT FORM

1. NAME (MR./MS.) Curtis L. Wrenn

   STREET ADDRESS: 4006 Loch Raven Boulevard

   CITY AND STATE: Baltimore, Maryland

   ZIP CODE: 21218

   PHONE NUMBER (AREA CODE) 301-243-0901

2. In the event this office is unable to locate me to discuss this complaint, the following person knows where to contact me:

   NAME (MR./MS.): Mr. Thomas E. Wrenn

   CITY AND STATE: 453 West 6th Street Birmingham, Alabama

   ZIP CODE: 35204

   PHONE NUMBER: 205-324-6948

3. Were you discriminated against because of (Please circle one or more, if appropriate):

   (Race) or Color Religion Sex National Origin

4. Who do you allege discriminated against you? Give the name of the institution or employer, (e.g., School District, Vocational-Technical School, Headstart Program, Etc.)

   NAME: G. Bruce McFadden, Director of University of Maryland Hospital

   STREET ADDRESS: 22 South Greene Street

   CITY AND STATE: Baltimore, Maryland

   ZIP CODE: 21201

   ORGANIZATIONAL UNIT: UNIVERSITY OF MARYLAND

5a. Have your filed this complaint with any other Federal, State or Local Government Agency?
(YES) NO

MONTH May DAY 25 YEAR 1978

If not, do you intend to file with another Agency? (YES) NO

AGENCY: The Honorable Eleanor Holmes Norton

STREET ADDRESS: The U.S. Equal Employment Opportunity Commission

CITY AND STATE: Washington, D.C.

ZIP CODE: _____

b. Have you pursued resolution of your complaint through the internal grievance procedure at your institution? YES (NO)

If the answer is "Yes", what is the status of your complaint?

_____

_____

_____

_____

6a. On what date(s) did the action complained of occur? June 27, 1977

b. When were you first aware that you were being treated in a discriminatory manner?

June 27, 1977

_____

c. What is the most recent date at which you experienced that alleged discriminatory

treatment? June 30, 1978

7. Describe the allegedly discriminatory conduct. In describing such conduct, it may be helpful to consider the following factors:

   a. Are other members of your class (same race, sex, or national origin) treated in the same allegedly discriminatory manner?

   b. Have individuals of the opposite sex, or majority race been treated differently from you in this matter or other matters of this kind?

   c. Has the respondent facility (agency) given you any explanation for its conduct which you believe to be discriminatory?

   d. How do you view the explanation given to you by the respondent health facility (agency)?

Please see attached continuation sheet.

(If more space is required, attach additional sheets)

8. Submit any written materials, data, or other documents which you think are relevant to your complaint.

/s/Curtis L. Wrenn 5/27/78

Encl
Personal Resume
Correspondence

Continuation of Item 7

Curtis L. Wrenn
vs.
University of Maryland Hospital

Most hospitals in America have established practices and patterns of discriminating against Black Hospital Administrators. This is even more pronounced among major university state owned teaching hospitals, such as the University of Maryland. Because of the size of such institution they tend to influence the personnel practices in their community. For example, soon after I was hired at the University of Maryland, a Black Hospital Administrator was hired by Johns Hopkins, our major competitor.

The discriminatory policies of these institutions have become so institutionalized that barriers have been created for blacks that do not exist for others. The discrimination is usually in one or more of the following forms:

(1) Recruiting. Although the institution may

profess to be an "equal opportunity employer," the facts tend to refute the slogan.

(2) Hiring. Most hospitals, especially major teaching hospitals, do not have even one Black Hospital Administrator.

(3) Education. It is extremely difficult for a Black Administrative Resident to obtain a residence in a major teaching hospital.

(4) Promotion. Very very few Blacks are ever promoted to second Level (Associate) in a teaching hospital, and I am not aware of any at the top or Director.

(5) Pay. Black Hospital Administrators, if hired, are usually paid less than other administrators.

Since my employment by the University of Maryland on May 1, 1976, I have personally been able to take

positive action regarding all of the above, except item 5 (pay). There is another Black Administrator on our staff (hired by me); last year we had our first Administrative Resident from Howard University (a Black female); and in 1976 we promoted a Black from Administrative Assistant to Assistant Director.

The University Hospital still, however, has an institutionalized practice of paying Blacks and females less than white males, for comparable work. For example, there are four associate hospital directors reporting directly to the Hospital Director, Of these, the Black (myself) and the female's salary is less than the other two. This exists even though one of the other two is the most junior in terms of years of service.

On June 27, 1977, I requested that my salary be adjusted to not less than that of the other two associates (at the time the director of Nursing did not carry the title of "Associate", although she was performing in that capacity.) My request was not

only disapproved, I was requested to submit my resignation that day (July 11, 1977). When I refused to resign, I was informed that I would receive a letter that day advising me of the termination of my employment. I asked for the reason and Mr. McFadden's response was "in accordance with the Associate Staff Policy" (which permits termination with proper notice (nine months) without having to give a reason or justification for the dismissal.

In January, I was advised verbally that my termination date was extended to July 1, 1978. Moreover, during the interim I would serve as a "staff person" to the Director. My name and function (Associate Director for Administration) have since been removed from the organizational chart.

The State of Maryland does not recognize the right of Associate Staff Members to file a grievance. Nor is there an appeal mechanism for employment

termination.

Since the University receives an inordinate amount of public funds, this complaint is filed with your office. I hereby ask that the University of Maryland be ordered to discontinue its discriminatory pay practices against blacks and women. And that the University be ordered to adjust my salary retroactive to July 1, 1977 as previously requested. Finally, that the University be ordered to restore me to my former position of Associate Director for Administration with the same rights, privileges, role, responsibility, authority, etc. previously enjoyed.

APPENDIX P
1 of 2 Pages

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

6/5/78
033-781246

EEOC CHARGE NO. _____

TO: Mr. Vernon Wingenroth, Asst. Director
Maryland Commission on Human Relations
Metro Plaza, Mondawmin Mall, Suite 300
Baltimore, Maryland 21215

SUBJECT: CHARGE TRANSMITTAL

Transmitted herewith is a charge of employment discrimination initially receive by the:

XX EEOC ___ MCHR (Name of 704 Agency) on

05/30/78
(Date of receipt)

_____ Pursuant to the work-sharing agreement, this charge is to be initially processed by the EEOC.

_____ Pursuant to the work-sharing agreement, this charge is to be initially processed by the 706 Agency.

_____ The work-sharing agreement does not determine which agency is to initially process the charge.

___ EEOC requests a waiver

___ No waiver requested

___ 706 Agency Waives

___ 706 Agency will process the charge initially

Please complete the bottom portion of this form to acknowledge receipt of the charge and, where appropriate, to indicate whether the 706 Agency will initially process the charge.

Name of EEOC Office Director or 706 Agency Director	Signature
Dorothy E. Mead	/s/Dorothy E. Mead

----------(Cut Here)----------

To whom it may concern:

__ This will acknowledge receipt of the referenced charge.

__ The 706 Agency will process the charge. Please refrain from processing until we have reached a final disposition.

__ The 706 Agency will not process the charge.

TO: Equal Employment Opportunity Commission
Baltimore District Office
711 West 40th Street, Room 210
Baltimore, Maryland 21211

Attention: Early Resolution

Date_____

EEOC Charge No. _____

706 Agency
Charge No. _____

Form 212-A (TEST)

APPENDIX Q
1 of 10 Pages

UNIVERSITY OF MARYLAND HOSPITAL
22 SOUTH GREENE STREET
BALTIMORE, MARYLAND 21201

OFFICE OF THE DIRECTOR June 3, 1978

Dr. Albin O. Kuhn, Chancellor
Baltimore Campus
University of Maryland
Room 104, Davidge Hall
522 West Lombard Street
Baltimore, Maryland 21201

Dear Doctor Kuhn:

The Personnel Policies and Rules for Associate Staff Employees of the University of Maryland does not provide for the filing of a grievance for an associate staff member who has received "adequate" notice of termination. In view of the fact that I am not entitled to the normal State grievance process that is available to other employees, I am appealing to you and the Board of Regents for such a hearing.

I am in receipt of a letter from Mr. G. Bruce McFadden in which he informed me that my employment with the University of Maryland Hospital

will be terminated as of April 11, 1978. Although I have not been given a reason for the termination of my employment (even though I requested this on July 11, 1977,) the firing was apparently a reprisal against me for requesting a salary adjustment. In this connection, on June 27, 1977, after receiving the Working Budget which reflected a salary differential among the then three Associate Directors, I wrote a letter to Mr. McFadden and requested that my salary be adjusted to at least the same level as the other two Associate Directors. I was advised by Mr. McFadden on July 11 that he would not approve my request for a salary increase. The lower paid of the other two Associates was receiving $40,539, whereas my salary was $38,500. A copy of the correspondence regarding this matter is attached.

I refuse to believe that Mr. McFadden's action is condoned by you, the President of the University, the Board of Regents, the Hospital Committee of the Board of Regents, or other State officials. Moreover, I do not believe the Personnel

Policies of the State would permit such unwarranted unilateral action on the part of an agent of the State, such as that taken by Mr. McFadden. Such permission or approval would be tantamount to this State's saying it does not believe in equal pay for equal work. As of this date I have not been given a reason for the termination of my employment, nor have I been given any form of hearing. consequently, I view Mr. McFadden's action as arbitrary, capricious, and a violation of my civil rights, especially the right of due process guaranteed by the Fourteenth Amendment to the constitution of the United States of America.

I consider it appropriate to mention that I was recruited and hired by Mr. McFadden, who was acting as an agent of the State of Maryland. I performed my duties in an apparently satisfactory manner, in that I received permanent employee status after completing the required probationary period. Upon completion of the probationary period and becoming a "permanent employee," I had reasonable expectations of continued employment with the State

of Maryland. My expectations were abruptly shattered by Mr. McFadden's letter of July 11. The termination, like the hiring, was a "state action" by a duly appointed agent of the State of Maryland. I have a constitutional right to a hearing prior to termination. By denying me such a hearing, Mr. McFadden violated my constitutional rights.

In view of the foregoing, this is to request that you, the approving authority for my appointment, take the following actions:

1. Revoke Mr. McFadden's letter of July 11, 1977 which terminated my employment.
2. conduct an impartial hearing to permit the fulfillment of constitutional rights guaranteed by the due process clause of the Fourteenth Amendment to the U.s. Constitution.
3. Adjust my salary retroactively to July 1, 1977 to the level I previously requested.
4. Restore me to my former position as

Associate Director for Administration, with all the rights, privileges, duties, role, responsibility, functions, accountability, authority, etc., enjoyed prior to July 11, 1977.

Because this matter has such far reaching implications for me, an early reply would be appreciated.

Very truly yours,

/s/Curtis L. Wrenn

enclosures

copies: Mr. Ronald J. Baril, Director, Personnel Service
Members of the Board of Regents
Dr. Wilson Elkins, President, University of Maryland

UNIVERSITY OF MARYLAND AT BALTIMORE
525 West Redwood Street,
Baltimore 21201

Office of the Chancellor

July 10, 1978

Mr. Curtis L. Wrenn
4006 Loch Raven Boulevard
Baltimore, Maryland 21218

Dear Mr. Wrenn:

Since receiving your letters concerning your termination as Associate Director for Administration, I have reviewed the actions of Mr. McFadden as Director of the Hospital in relation to your employment.

Insofar as I can determine, Mr. McFadden has followed the procedures and policies in relation to your employment and termination, and I can find no basis at this time for reconsidering his decision.

If you feel that a meeting with you and/or your representative would be of value, I shall be pleased to arrange for such a meeting.

Very truly yours,

/s/A.O. Kuhn
Albin O. Kuhn
Chancellor

AOK:AMF

P.O. Box 1189
Petersburg, Virginia 23803
July 16, 1978

Dr. John S. Toll, President
University of Maryland
Center of Adult Education
College Park, Maryland 20742

Dear Dr. Toll:

I am in receipt of a letter from Dr. Albin O. Kuhn, dated July 10, 1978, in which he advises me that he "can find no basis at this time for reconsidering his (Mr. G. Bruce McFadden) decision (terminating my employment as of June 30, 1978.)"

In keeping with the chain of command of the University of Maryland, I direct my request for a hearing to you as President. This is to request that you take the action which I requested to Dr. Kuhn in my letter of June 3, 1978.

An early reply would be appreciated.

Very truly yours,

Curtis L. Wrenn

cc: The Honorable Blair Lee, III, Acting Governor
Dr. B. Herbert Brown, President, Board of Regents.

UNIVERSITY OF MARYLAND
COLLEGE PARK 20742

VICE PRESIDENT
ADMINISTRATION

July 28, 1978

Mr. Curtis L. Wrenn
P.O. Box 1189
Petersburg, Virginia 23803

Dear Mr. Wrenn:

On behalf of Dr. John S. Toll, I am responding to your letter of July 16, 1978 requesting a hearing and seeking action that you requested of Dr. Albin O. Kuhn in a letter dated June 3, 1978.

I must inform you that the Personnel Policies and Rules for Associate Staff Employees of the University of Maryland does not provide for a hearing in your case. I have been informed, however, that in his letter of July 10, 1978 to you, Dr. Kuhn indicated his willingness to meet with you and/or your representative. It is my suggestion to you, therefore, that should you wish to discuss with a University officer the action taken by Mr. Bruce McFadden, it would be most appropriate for you to

accept Dr. Kuhn's invitation for a meeting.

Sincerely,

/s/Donald W. O'Connell
Donald W. O'connell
Vice President for
General Administration

DWOC:sb

cc: Acting Governor Blair Lee III
Dr. B. Herbert Brown
Dr. John S. Toll
Dr. Albin O. Kuhn
Mr. G. Bruce McFadden
Miss. Patricia A Day
Mr. Michael Lower

APPROVED BY AO | CHARGE #(S) AGENCY USE

CHARGE OF DISCRIMINATION

Equal Employment Opportunity Commission and (State or Local Agency)

Name | Home Telephone Number
Curtis L. Wrenn

Street Address
P.O. Box 1189

City,State & Zip Code | County
Petersburg, Virginia 23803

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME. (If more than one list below).

Name | Telephone Number
University of Maryland - Hospital | 301/ 528-6294

Street Address | City, State & Zip Code
22 S. Greene Street | Baltimore, Maryland 21201

Name | Telephone Number

Street Address | City, State & Zip Code

CAUSE OF DISCRIMINATION BASED ON MY

X Race __ Color __ Sex __ Religion

__ National Origin __ Other (Specify)

THE PARTICULARS ARE:

I. I was employed by the above named hospital on May 1, 1976 as Associate Director for Administration.

On July 11, 1977 I received a letter of termination, effective April 11, 1978. In January, 1978, I was advised verbally that my termination date was extended to July 1, 1978.

Additionally, I was paid a lower salary than two white male Associate hospital Directors; one of whom is junior in terms of years of service.

II. When I requested that my salary be adjusted to not less than that of the other two associates, my request was not only disapproved, but I was asked to submit my resignation that day. When I asked for the reason, Mr. Bruce McFadden's response was - "in accordance with the Associate Staff Manual."

III. I believe I have been discriminated against because of my race (black) with respect to wages and termination for the following reasons:

a. The University has a practice of paying blacks and females less than white males for comparable work;

b. As stated above, I was asked for my resignation immediately after my request for a salary adjustment comparable to that of the other two white male associates:

c. I was the only black Associate Director employed by the hospital. My duties and responsibilities were greater than tne white Associates with less pay.

I will advise the agency if I change my address or telephone number and I will cooperate fully with them in the processing of my char accordance with its procedures.

/s/Curtis L. Wrenn

APPENDIX S
1 of 10 Pages

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20504

IN THE MATTER OF

CURTIS WRENN,

Charging Party,

v.

UNIVERSITY OF
MARYLAND HOSPITAL,

Respondent.

CHARGE NO. 033-78-1246
SUBPOENA NO. BA-79-004

ADDRESSEE:
James T. Mingle,
Assistant Attorney
General
One South Calvert
Boulevard, Room 1202
Baltimore, Maryland 21202

DETERMINATION ON APPEAL PETITION

Respondent-Appellant, University of Maryland Hospital (hereinafter Respondent) has filed a timely appeal from a determination of the District Director of the Baltimore District Office, denying its petition to revoke a subpoena. The requisite number of Commissioners having reviewed the appeal petition pursuant to the Commission's Procedural Regulations,

29 C.F.R. 1601.16(b), the Commission hereby grants the appeal petition in part, for the reasons discussed below:

The District Director refused to revoke the subpoena but granted a modification. Petition to revoke was filed 12 days instead of five days after the subpoena, and thus beyond the time specified in the Commissions's procedural regulations. However, the District Director based her decision on the merits of the petition and not on whether it was timely filed. She agreed to narrow Document Request No. 5 on page 5 and otherwise denied the petition.

There are four general issues remaining on appeal to the General Counsel. These involve (1) timeliness of Respondent's Petition to Revoke Subpoena, (2) timeliness of charge, (3) sufficiency of charge, and (4) relevancy of information sought by the Commission.

We agree with the actions of the District Director as of the time she issued her determination. However, because of the subsequent decision on December 15, 1980, by the U.S. Supreme

Court in Ricks v. Delaware State College, 41 CCH S. Ct. Bull. p. B479, we grant further modification of the subpoena. Pursuant thereto, Respondent may disregard Items 1 and 5 on page 2 of the subpoena except as they relate to remaining Items. Determination of issues is discussed in detail below:

I.

Issue 1: Is the five day filing period for a petition to revoke or modify a subpoena mandatory per se? Respondent raised not only lack of prejudice in that its petition was filed within 12 days, but also that the commission itself does not always adhere to time limits in the same regulation /29 C.F.R. 1601.16(b)/. The regulation calls for the Commission to issue a decision within 8 days or as soon thereafter as practicable. The District Director noted that a pre-1972 regulation providing for 20 days in which to appeal was held by the court to be strictly enforceable in Overnite Transportation Company v. EEOC, 398 F. 2d 360 (5th Cir. 1968).

II.

Issue 2: Was the charge timely filed? As the law was interpreted at the time the Commission accepted jurisdiction, all issues raised by the charge appeared to be timely. The Commission held that the wording of the Act justified a belief by Charging Parties that an alleged violation of the Act took place, not only with notification of a personnel action, but also as of the effective date of an action alleged to be discriminatory. Ricks v. Delaware State College, 605 F. 2d 710 (1979). However, the Supreme court reversed that decision and ruled that the limitations period commenced to run when the tenure decision was made and notification of decision was given.

We point out that the Commission is not obligated to determine timeliness in advance of issuance of a subpoena, but may investigate to determine timeliness. The District Director's authority for this proposition is still correct. However, in EEOC v. General Tire & Rubber Co., 22 FEP Cases 574, 22 CCH EPD 30, 826 (D.C. N.D. Ohio, 3/17/80) the court

went on to cite and support:

> "A different result might ensure if there is no factual or legal support for an agency's preliminary determination that a charge had been filed within the required time after the allegedly unlawful termination."

Since the Charging Party filed his charge more than a year after notice that he would be denied tenure and not receive a new contract, we no longer find the matter in doubt in the light of the ruling of the Supreme Court in Ricks, supra. Further, a letter from Charging Party to his former employer shows that he protested the action as retaliatory approximately a year before he filed a charge. Unfortunately for some of his Title VII rights, he filed a charge a few days after his employment with Respondent ceased.

While we find the charge untimely in regard to the issue of denial of tenure and non-renewal of contract, there are allegations of continuing discrimination in the charge which are viable. These include an alleged policy by Respondent of paying blacks and females less than white males for

comparable work, pursuant to which policy Charging Party received less pay. Allegations of a continuing nature also include that Respondent imposed on Charging Party duties and responsibilities greater than those of white associates who earned more. Investigation will enable the Commission to determine whether retaliation might have occurred and continued.

Respondent's tenure policies and procedures as well as its discharge of Charging Party could be evidentiary in regard to these alleged continuing violations. Although we agreed to delete Items 1 and 5 on Page 2 of the subpoena in view of the Supreme Court's ruling, this should not in any way restrict investigation of the alleged continuing violations. We judge the scope of the subpoena to be broad enough without the deleted items to permit investigation of anything impacting upon Charging Party's pay and treatment including to the extent they may have been involved, his discharge and his inability to secure tenure.

III.

Issue 3: Is the charge sufficient? Respondent argues that Charging Party's complaint that he questioned being paid less than two white persons and then was given notice does not allege an unlawful basis. We find this argument lacking in merit based on numerous cases cited by the District Director, including Graniteville Co. v. EEOC (CA 4 1971), 438 F. 2d 32, and EEOC v. General Electric Company (CA 4 1976) 532 F. 2d 359. In addition, Charging Party not only checked the "race" block on the complaint, he specifically alleged discrimination based on race (black) in his charge.

Respondent makes much of the fact that prior to his filing a charge of discrimination with EEOC, Charging Party protested lack of due process, not racial discrimination, in challenging his termination. We find no inconsistency whatsoever in Charging Party's exploration of the applicability to himself of a line of cases, including Board of Regents v. Roth, 408 U.S. 546, 92 S. Ct. 2701 (1972). These cases hold that where a governmental

employer's actions have the effect of stigmatizing an employee, such actions are unconstitutional when not based on due process of law including a hearing. Charging Party may have sought a due process hearing for the purpose of further informing himself whether or not he might be a victim of racial discrimination or reprisal.

IV.

Issue 4: Is the information sought relevant? Respondent objected to making available for testimony one of its officials on grounds the official might incur personal liability if Charging Party initiated a lawsuit. This, of course, does not affect the relevancy of the testimony nor the Commission's right to depose the official. At that time objections to any questions can be considered.

Since 1976, in any event, there is less likelihood that an official of a state institution would be personally named in a suit because of the ruling of the U.S. Supreme Court in Fitzpatrick v. Bitzer, 423 U.S. 1031, 96 S. Ct. 1490 (1976). The Court held that by amending Title VII in 1972,

Congress waived the immunity provisions of the Eleventh Amendment for states insofar as Title VII actions are concerned. Prior to that ruling, individual officers were sometimes sued because of the difficulties involved in recovery against a state agency.

Respondent's objection to disclosing the sex of Associate Directors in a race case is answered by the District Director, including by the citation of Burns v. Thiokol Chemical Corp., 483 F. 2d 300 (CA 5 1973). The Commission believes an understanding of an employer's work force pattern is essential to the development of appropriate relief, including affirmative action, should a need for remedial action be found.

Finally, Respondent's objection to providing comparative information in response to Request Nos. 3 and 4 cannot be sustained. The law is well settled that an employer's "pattern of action" is relevant to the Commission's determination of whether there is discrimination against an individual. Graniteville, supra, EEOC v. South

Carolina National Bank, (CA 4 1977), 562 F. 2d 329, Blue Bell Boots, Inc. v. EEOC, (CA 6 1969), 418 F. 2d 355, and McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

DETERMINATION

Respondent's appeal petition is partially granted. The subpoena is modified to the extent that addressee therein is directed to appear before _____ of the United States Equal Employment Opportunity Commission at the Baltimore District Office, Room 210, 711 W. 40th Street, Baltimore, Maryland at 10 o'clock a.m. on _____ 1981, and produce documents required by the subpoena as modified and to produce Mr. McFadden for testimony.

On Behalf of the Commission

2/12/81 /s/LEROY D. CLARK

General Counsel

APPENDIX T

P.O. Box 1691
Albany, NY 12201
June 11, 1984

RE: Wrenn v. University of Maryland Hospital (EEOC #033781246)

Mr. Nathan D. Dick, Deputy Director
Office of Program Operations
U.S. Department of Health and Human Services
Washington, D.C. 20201

Dear Mr. Dick:

Enclosed please find the EEOC's Determination of "reasonable cause" in the charge of employment discrimination filed by me against the above employer.

Please advise me what action, if any, your agency will take to deny Federal funds under Title IV to the above employer.

Please advise.

Sincerely,

/s/Curtis L. Wrenn

Enclosure

APPENDIX U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BALTIMORE DISTRICT OFFICE
100 Market Place, Suite 4000
Baltimore, Maryland 21202

December 6, 1984

Paul F. Cushing
Regional Manager
Dept. of Health and Human Services
Office for Civil Rights
P.O. Box 13716
Philadelphia, Pennsylvania 19101

Dear Mr. Cushing:

Pursuant to your recent request, enclosed is a copy of the investigative file for 033-78-1246.

If you have any questions, please call Gloria L. Underwood, Compliance Manager, at (301) 962-3374.

Sincerely,

/s/Dorothy E. Mead
District Director

Enclosure

APPENDIX V
1 of 5 Pages

DEPARTMENT OF HEALTH AND HUMAN SERVICES
REGION III
3636 MARKET STREET
PHILADELPHIA, PENNSYLVANIA

JAN 29, 1986

OFFICE OF THE SECRETARY
OFFICE FOR CIVIL RIGHTS

MAILING ADDRESS:
P.O. BOX 13716
PHILADELPHIA
PENNSYLVANIA 19101

Our Reference: 03853014

Mr. Curtis L. Wrenn
P.O. Box 1691
Albany, New York 12201

Dear Mr. Wrenn:

The Office for Civil Rights (OCR) has completed its investigation of your complaint filed against the University of Maryland Medical System Corporation (UMMS). You alleged that UMMS's employment policies and procedures discriminate against black health administrators, which adversely affects the delivery of services to the beneficiaries.

Our office conducted an investigation under the authority of Title VI of the Civil Rights Act of

1964, and its implementing Regulation, 45 Code of Federal Regulations (CFR) Part 84, to determine whether UMMS Discriminates in its employment practices on the basis of race. Section 80.3 (c)(3) prohibits a recipient of Federal financial assistance from the U. S. Department of Health and Human Services from discriminating in its employment practices on the basis of race, color, or national origin.

UMMS is a recipient of Federal funds through the Medicare and Medicaid programs and through research grants from the National Institutes of Health, and therefore subject to the provisions of this Regulation.

On January 24, 1986, Ms. Joyce Wright-Lamb of my staff reviewed with you the results of our investigation of your complaint. Specifically, our investigation showed that UMMS is in compliance with Title VI of the Civil Rights Act of 1964 based on the January 14, 1986 voluntary corrective action plain submitted to our office. UMMS has voluntarily adopted a plan which includes the active recruitment

of qualified minorities. We were pleased that you concurred with the plan of actions taken by UMMS. A summary of the plan follows:

1. UMMS developed a plan to initiate a more aggressive campaign toward reaffirming and disseminating its nondiscrimination policy to employees, the local business community, the Maryland medical community, and other community organizations.
2. UMMS organized an Affirmative Action Committee to manage the progress of the voluntary correction action plan.
3. UMMS will undertake appropriate and aggressive recruitment actions to attract qualified minorities into executive level positions. The Affirmative Action Committee will contact representatives of minority organizations, and attend workshops and conferences sponsored by those organizations to recruit minorities.
4. UMMS will develop an upward mobility program to ensure that promotional and training

opportunities for minorities shall be obtained from within.

Additionally, UMMS has shown positive efforts to implement its recruitment program by hiring minorities to these executive level positions: Vice President of Operations, Vice President for Medical Education and Affiliations, Risk Management Director and Director for Social Work

We have determined that the voluntary actions taken by UMMS constitute compliance with Title VII and its implementing Regulation, 45 CFR Section 80.3 (c)(3), with respect to this issue. This determination is not intended and should not be construed to cover any other issues regarding compliance with Title VI which may exist but were not specifically addressed during our investigation.

We wish to advise you that under the Freedom of Information Act of 1974, it may be necessary to release this document and related correspondence in response to an inquiry. In the event we receive such a request, we will make every effort to protect information that identifies individuals or that, if

released, would constitute and unwarranted invasion of privacy.

If you have any questions, please do not hesitate to contact Barbara Banks, Director, Investigations Division at (215) 596-6173.

Sincerely yours,

/s/Paul F. Cushing
Paul F. Cushing,
Regional Manager
Office for Civil Rights

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CURTIS L. WRENN, Individually and on behalf of all others similarly situated,

Plaintiff

vs.

G. BRUCE MCFADDEN, ET AL,

Defendants

CIVIL ACTION NO. JH 82-2044

PLAINTIFF'S FIRST AMENDED COMPLAINT

. . . . . .

PLAINTIFF'S FIRST AMENDED COMPLAINT

1. The jurisdiction of the Court is invoked pursuant to the provisions of 28 U.S.C. 1343(4), this being an action in equity and a suit authorized by law to be commenced by any person to recover damages for injury and to secure other relief under acts of Congress providing for the protection of civil rights.

2. The jurisdiction of this Court is also invoked pursuant to 28 USC Section 1331, this being a civil action wherein the matter in controversy exceeds the sum or value of ten thousand ($10,000.00) dollars, exclusive of interests and costs, and arises under the Constitution and laws of

the United States.

3. The jurisdiction of this Court is also invoked pursuant to 42 U.S.C. Section 1981, this being an action brought by a Black plaintiff who has been denied the right to make and enforce contracts and the right to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, specifically with respect to contracts, compensation, terms, conditions and privileges of employment.

4. The jurisdiction of this Court is also invoked pursuant to 42 U.S.C. Section 2000d, et.seq., this being an action brought by a Black plaintiff who has been denied the right to participate in Federally assisted programs on grounds of race.

5. The jurisdiction of this Court is also invoked pursuant to 42 U.S.C. Section 2000e-2, et.seq., this being an action brought by a Black plaintiff who has been denied equal pay for equal work (discriminated against with respect to his

compensation) and who has been discharged from employment because of his race.

6. The jurisdiction of this Court is also invoked pursuant to 42 U.S.C., the Civil Rights Act of 1964, as amended, Titles VI (Section 2000-d, et.seq.) and VII (Sections 703(a) and 704(a)), this being an action brought by a Black plaintiff who was denied equal pay and who was subsequently discharged from employment because he had opposed a practice made an unlawful employment practice by Titles VI and VIII.

7. The Defendant, University of Maryland Hospital, is a not-for-profit hospital, and is a resident of and/or doing business within and/or has its principal place of business within this judicial district.

8. All actions and/or failures to act of the Defendant Hospital herein, as alleged hereinafter, by and through its various officers, agents and/or employees, occurred within this judicial district.

9. The status of the Defendant Hospital, referred to in the preceding paragraph seven (7) is

the status of the Defendant at the present time and at all times up to the present time continuously since at least May 1, 1976.

10. The Defendant, G. Bruce McFadden (hereinafter "Defendant McFadden"), in all pertinent respects as set forth in this complaint, shall be deemed to have been acting in his individual capacity; alternatively, all actions and/or failures to act on the part of Defendant McFadden as set forth hereinafter shall be deemed to have been undertaken in his capacity as Director of Defendant Hospital.

11. The actions and/or failures to act on the Defendant Hospital by and through its various officers, agents and/or employees as alleged hereinafter, shall be deemed to have been performed and/or undertaken, or not performed and/or not undertaken, as the case my be, in their capacities as agents, officers and/or employees of Defendant, acting within the scope of their respective said authority and in furtherance of the business interests and purposes of the Defendant.

12. On or about June 27, 1977, Plaintiff submitted a request to Defendant McFadden requesting a salary adjustment.

13. On or about July 11, 1977, in separate letters signed by Defendant McFadden, Plaintiff was advised that: (1) "Your request for a salary adjustment is not approved", and (2) "you are hereby given notice that your employment will be terminated in nine months from this date".

14. Therefore, since on or about July 11, 1977, and up to the present time, and into the foreseeable future, the Plaintiff has and will be denied equal rights with his white contemporaries thereby discriminating against said Plaintiff with respect to the compensation, terms, conditions and privileges of employment because of his race and/or his opposition to a practice made an unlawful employment practice by Titles VI and VII, in violation of his rights under the Constitution of the United State and/or under 42 U.S.C. Section 1981, and/or under Titles VI and VII of the Civil Rights Act of 1964.

15. Said wrongful acts and conduct by the Defendants constituted a wanton, willful and reckless violation of 28 U.S.C., Section 1343(4).

FIRST CLAIM:

16. The allegations contained in the foregoing paragraphs one (1) through fifteen (15) are incorporated herein expressly by reference as though fully set forth.

17. The Defendants decision not to grant Plaintiff's request for salary and/or pay adjustment, and the subsequent dismissal and denial of a hearing, as alleged hereintofore, was based upon the Defendants intentionally discriminating against Plaintiff because of his race (Black), in violation of Title VII of the Civil Rights Act of 1964, as amended, and/or 42 U.S.C. 1981, and/or 42 U.S.C. Section 1983.

18. As a direct and proximate result of those actions and conduct on the part of the Defendants, Plaintiff has and will continue to suffer severe and intense emotional distress, mental anguish, humiliation, embarrassment and loss of income and

has and in the future will continue to incur expenses and legal fees in order to ensure the vindication of his legal rights.

SECOND CLAIM:

19. The allegations of law and fact contained in the foregoing paragraphs one (1) through eighteen (18) are incorporated herein expressly by reference as though fully set forth.

20. The University of Maryland is a recipient of federal funding, and is otherwise an employer subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000-d, et.seq.

21. The Defendants decision not to grant Plaintiff's request for salary and/or pay adjustment, and the subsequent dismissal and denial of a hearing, as alleged hereintofore, was based upon the Defendants intentionally retaliating against Plaintiff for having opposed a practice made an unlawful employment practice by Titles VI and VII, which "retaliation" is violative of the Civil Rights Act of 1964, 42 U.S.C. Section 2000-d, et.seq., and specifically violative of the

regulations promulgated pursuant thereto, 34 C.F.R. 1007(c).

22. As a direct and proximate result of those actions and conduct on the part of the Defendants, Plaintiff has and will continue to suffer severe and intense emotional distress, mental anguish, humiliation, embarrassment and loss of income and has and in the future will continue to incur expenses and legal fees in order to ensure the vindication of his legal rights.

THIRD CLAIM:

23. The allegations of law and fact contained in the foregoing paragraphs one (1) through twenty-two (22) are incorporated herein expressly by reference as though fully set forth.

24. On or about February 13, 1979, Defendant McFadden did make the following statement to certain officials of the Sain Elizabeths Hospital "Mr. Wrenn has a soft, outward personality but he is quite aggressive. He is very interested in promoting the cause of his race and this sometimes comes first. We had a salary disagreement. He felt that his pay

should be the same as the other two Associate Directors (Finance and Medical); however, the decision was made that his position (Administration) be paid at a lower level. As a result, he filed an EEO complaint against the Hospital ...". As a direct and proximate result of the adverse reference from Defendant McFadden, Plaintiff was not hired for the position of Associate Superintendent for Administration.

25. The post-employment adverse action by Defendant McFadden as alleged hereintofore was based upon the Defendant intentionally retaliation against Plaintiff for having previously opposed a practice made an unlawful employment practice by Titles VI and VII and/or the Constitution of the United States of America, which "retaliation" is violative of Sections 703(a) and 704(a) of Title VII of the Civil Rights Act of 1964 and/or 42 U.S.C., Section 1981, and/or 42 U.S.C. Section 1983, and/or 42 U.S.C. 2000-d, et.seq.

26. As a direct and proximate result of those actions and conduct on the part of Defendant

McFadden, Plaintiff has and will continue to suffer severe and intense emotional distress, mental anguish, humiliation, embarrassment and loss of income and has and in the future will continue to incur expenses and legal fees in order to ensure the vindication of his legal rights.

FORTH CLAIM:

27. The allegations of law and fact set forth in the foregoing paragraphs one (1) through twenty-six (26) are incorporated herein expressly by reference as though fully set forth.

28. The Defendant Hospital is a recipient of federal funding, and is otherwise an employer subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000-d, et.seq.

29. The Defendants decision not to grant Plaintiff's request for salary and/or pay adjustment, and the subsequent dismissal and denial of a hearing, as alleged hereintofore, was based upon the Defendants intentionally retaliating against Plaintiff for having opposed a practice made an unlawful employment practice by Title VI of the

Civil Rights Act of 1964, 24 U.S.C. Section 2000-d, et.seq., and specifically violative of the regulations promulgated pursuant thereto, 34 C.F.R. 1007(c).

30. As a direct and proximate result of those actions and conduct on the part of the Defendants, Plaintiff has and will continue to suffer severe and intense emotional distress, mental anguish, humiliation, embarrassment and loss of income and has and in the future will continue to incur expenses and legal fees in order to ensure the vindication of his legal rights.

FIFTH CLAIM:

31. The allegations of law and fact contained in the foregoing paragraphs one (1) through thirty (30) are incorporated herein expressly by reference as though fully set forth.

32. The defendants decision not to grant Plaintiff's request for salary and/or pay adjustment, and the subsequent dismissal and denial of a hearing, as alleged hereintofore, was based upon the Defendants intentionally retaliating

against Plaintiff, which "retaliation" constitutes a denial of Plaintiff's rights to make and enforce contracts (e.g., compensation, terms, conditions and privileges of employment) on an equal basis with his white contemporaries, in violation of his rights secured by the Constitution of the United States and by 42 U.S.C. Section 1981.

33. As a direct and proximate result of those actions and conduct on the part of the Defendants, Plaintiff has and will continue to suffer severe and intense emotional distress, mental anguish, humiliation, embarrassment and loss of income, and has and in the future will continue to incur expenses and legal fees in order to ensure the vindication of his legal rights.

Respectfully submitted,

/s/Curtis L. Wrenn PRO SE
c/o Shirley F. Wrenn
P. O. Box 603
Aberdeen Proving Grounds, MD 21005

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy

of the foregoing was duly served via ordinary U. S. Mail, postage prepaid, upon counsel for Defendants, James J. Mingle, Assistant Attorney General, The Munsey Building, 6th Floor, Seven North Calvert Street, Baltimore, Maryland 21202, this 9th day of September, 1982.

/s/Curtis L. Wrenn

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CURTIS L. WRENN	*	
Plaintiff	*	
v.	*	CIVIL ACTION NO.:
G. BRUCE McFADDEN, et al.	*	HAR-82-2044
Defendant	*	

* * * * * * *

ORDER OF DISMISSAL

Upon consideration of Defendant's Motion to Dismiss Plaintiff's First Amended Complaint, the supporting and opposing memoranda filed by the parties, and oral argument presented at hearing,

It is ORDERED and ADJUDGED that the motion is granted and the First Amended Complaint is dismissed with prejudice because:

1. Plaintiff failed to exhaust any administrative remedy concerning his claims brought pursuant to Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Subsection 2000d, with any federal agency responsible for enforcement of the nondiscrimination provisions and regulations of

this statute.

2. Plaintiff failed to file a timely charge with the Equal Employment Opportunity Commission regarding any claims brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Subsection 2000e, and he further failed to raise any claim of retaliation or to name any individual defendant in the untimely charge he did file.

3. Plaintiff's claims brought pursuant to 42 U.S.C. Subsection 1981 and 1983 are time barred since they were not filed within the limitation period specified in MD. CATS. & JUDE. PROC. CODE ANN. Subsection 5-101.

Dated this 22nd day of May, 1985

/s/Signature illegable
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 85-1664

Curtis L. Wrenn, individually
and on behalf of all others
similarly situated

Plaintiff-Appellant

v.

G. Bruce McFadden, individually and as Director of the University of Maryland Hospital; Albin O. Kuhn, Ph.D., individually and as Chancellor of the University of Maryland at Baltimore; Wilson H. Elkins, Ph.D., individually and as President of the University of Maryland; John S. Toll, Ph.D., individually and as President of the University of Maryland; the Honorable Blair Lee, III, individually and as Acting Governor of the State of Maryland; B. Herbert Brown, individually and as Chairman of the Board of Regents of the University of Maryland at Baltimore; Donald W. O'Connell, individually and as Vice President for General Administration of the University of Maryland; the University of Maryland Hospital; The University of Maryland; The State of Maryland,

Defendants-Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore. John R. Hargrove, District Judge. (C/A No. 82-2044)

Submitted: March 30, 1988

Decided: September 6, 1988

Before HALL, WILKINSON, and WILKINS, Circuit Judges.

(Curtis L. Wrenn, Appellant Pro Se. Robert B. Barnhouse, Esquire, for Appellees.

PER CURIAM:

Curtis L. Wrenn, proceeding pro se, brought this action against the University of Maryland Hospital, the University of Maryland, the State of Maryland, and seven other defendants in their individual and official capacities, alleging claims under Title VII, 42 U.S.C. Subsection 2000e; Title VI, 42 U.S.C. Subsection 2000d; the Equal Pay Act, 29 U.S.C. Subsection 206(d); and 42 U.S.C. Subsections 1981 and 1983. The district court dismissed the action. It held that the Subsections 1981 and 1983 claims were stale, the Title VII claims were not timely filed with the Equal Employment Opportunity Commission (EEOC), the retaliation claims were not included in the EEOC charge, and the Title VI claims were subject to administrative exhaustion. This appeal followed.

We affirm the district court's dismissal of the Subsections 1981 and 1983 claims, the Title VI claim, and the Title VII wrongful termination and retaliation claims. The Subsection 1981, Subsection

1983, and Title VI claims were barred by Maryland's three-year statute of limitations. Md. Cts. & Jud. Proc. Code Ann. SS 5-101 (1984). See Goodman v. Lukens Steel Co., 55 U.S.L.W. 4881 (U.S. June 19, 1987)(Nos. 85-1626, 2010); Wilson v. Garcia, 471 U.S. 261 (1985); Gratten v. Burnett, 710 F.2d 160 (4th Cir.), aff'd, 468 U.S. 42 (1984). The wrongful termination claim was not timely filed with the EEOC. See Delaware State College v. Ricks, 449 U.S. 250 (1980); Price v. Litton Business Sys., 694 F.2d 963 (4th Cir. 1982). Wrenn failed to exhaust administrative remedies with regard to his retaliation claim. Although he argues on appeal that the district court may exercise ancillary jurisdiction over this unexhausted claim, we do not consider this argument because Wrenn failed to raise it in the district court. See Wilkins v. Whitaker, 714 F.2d 4, 7 n.1 (4th Cir. 1983), cert. denied, 468 U.S. 1217 (1984).

We affirm the district court's dismissal of all the defendants whose names did not appear on the face of the EEOC charge except G. Bruce McFadden.

Wrenn clearly named McFadden in the narrative of the EEOC charge filed on July 5, 1978, and McFadden made no claim of prejudice from Wrenn's failure to name him as a respondent. See Dickey v. Greene, 603 F. Supp. 102 (E.D.N.C. 1984).

We vacate the district court's dismissal of the Title VII wage discrimination claim. This Court has held that the denial of equal pay is "continuing," because it arises with the receipt of each "unequal" paycheck. Jenkins v. Home Ins. Co., 635 F.2d 310 (4th Cir. 1980). Wrenn received his last paycheck around July 1978. He filed his EEOC complaint on May 25, 1978. His claim thus was timely, and the case should be remanded for the district court to consider it.

Wrenn's motion for oral argument is denied. We find that the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED IN PART;
VACATED IN PART;
AND REMANDED.

APPENDIX Z
1 of 2 Pages

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 85-1664

Curtis L. Wrenn, etc.,

Plaintiff-Appellant,

v.

G. Bruce McFadden, etc., et al,

Defendants-Appellees.

On Petition for Rehearing with Suggestion for Rehearing in Banc

The appellant's petition for rehearing, suggestion for rehearing in banc, and letter/motion for leave to file addendum to petition for rehearing were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be

denied,

IT IS ORDERED that the motion for leave to file an addendum to the petition for rehearing is granted, and the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Hall, with the concurrence of Judge Wilkinson and Judge Wilkins.

For the Court

/s/John M. Greacen
Clerk

APPENDIX AA

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 85-1664

Curtis L. Wrenn, etc.,

Plaintiff-Appellant,

v.

G. Bruce McFadden, etc., et al,

Defendants-Appellees.

Appeal from the United States District Court for the District of maryland, at Baltimore. John R. Hargrove, District Judge.

Upon consideration of appellant's petition for reconsideration of this Court's order denying rehearing,

IT IS ORDERED that the petition is denied.

Entered at the direction of Judge Hall, with the concurrence of Judge Wilkinson and Judge Wilkins.

For the Court

/s/John M. Greacen
Clerk

APPENDIX AB
1 of 7 Pages

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CURTIS L. WRENN,

Plaintiff, CIVIL NO HAR-82-2044

vs

G. BRUCE McFADDEN, ET AL.,

Defendants. AFFIDAVIT OF PLAINTIFF

STATE OF NEW YORK)

) ss

COUNTY OF JEFFERSON)

I, Curtis L. Wrenn, being first duly sworn, deposes and says that I am the plaintiff in this case and that this affidavit is submitted in support of Plaintiff's Motion for Summary Judgment in his favor.

In early 1976 while I was employed by the Medical Center Hospitals, Norfolk, VA, I received a telephone call from G. Bruce McFadden (defendant in this case) who inquired of my interest and availability for the position of Associate Director for Administration, University of Maryland Hospital,

Baltimore (UMH), MD. Mr. McFadden stated I had been recommended to him by certain faculty members of the Medical College of Virginia-Virginia Commonwealth's Program in Hospital and Health Care Administration.

During the course of our conversation Mr. McFadden invited me to Maryland for an interview. I was interview by McFadden and members of his staff at UMH. Following that initial, McFadden visited me in Norfolk for a second interview. In early March I was offered and accepted the position, and reported for work in May 1976.

During my orientation I was informed that the salary for all associate directors was $35,000. I was also informed that I was subjected to a one year probationary period to be eligible for continued employment.

In May 1977 I was informed that as a result of my performance my personnel records would reflect that I had successfully completed the required probationary period and that I was therefore a "permanent" employee. I was also informed that as a

result of my job performance I would receive the highest merit increase permitted by the State, i.e., 10% or $3500.00 effective July 1, 1977.

In early June 1977 while serving as a member of the UMH Budget Committee, I learned that McFadden was hiring an associate director for finance and would start him at a salary higher than mine. A further review of the budget reflected that the two white male associate had an annual salary considerable higher than mine.

As a result of my review of the budget, on June 27, 1977 I submitted a letter to McFadden and requested an adjustment in my salary. I was called into McFadden's office on July 11, 1977 and was informed that my salary adjustment request was denied. McFadden asked me to resign. I declined to resign and McFadden informed me that my employment as Associate Director for Administration would be terminated in nine months, and that I would be receiving his decisions in writing. The correspondence is attached as Appendix A.

Following the receipt of McFadden's letters of

July 11, 1977 I continued to work for UMH, performing duties assigned by McFadden. I continued to be paid less than the two white male associate directors.

Although the state of Maryland did not recognize the due process right of "associate staff employees" I asked various Maryland officials to review and reverse McFadden's decisions. They declined to do so.

On or about May 27, 1978, while still employed by the UMH and while still being paid less than whites doing similar work, I filed a charge of employment discrimination by mail with the U. S. Equal Employment Opportunity Commission (EEOC) and the then U. S. Department of Health, Education and Welfare (predecessor to Department of Health and Human Services (DHHS)). The date stamped in the upper right hand corner of the charge face sheet indicates that the charge was received May 30, 1978 at 10:51 AM in the EEOC Baltimore District Office. The charge is at Appendix B.

The charge alleged, among other things, that "The

University (of Maryland) Hospital still, however, has an institutionalized practice of paying Blacks and females less than white males, for comparable work." Page 5 of Appendix B.

During the latter part of 1977 I was hospitalized as a result of a severe rapid weight loss. The diagnosis was acute thyroid problem, a problem the attending physicians attributed to extreme stress brought on by the job firing. Following my release from the hospital and my return to duty, McFadden visited me in my office and informed me that I did not have to comply with the nine month employment termination outlined in his letter to me of July 11, 1977 (page 2 of Appendix A), but rather I could remain with the hospital until I found employment. In June 1978 I was offered and accepted a position of Administrator, Anoka State Hospital , Anoka, MN. My last day of employment with UMH was July 1, 1978.

In early 1979 I was interviewed for the position of Associate Superintendent for Administration, Saint Elizabeths Hospital, Washington, DC. I was denied the position as a proximate result of a

statement attributed to McFadden. See Appendix D. I also learned that I was denied positions in hospital and health care administration by the Truman Medical Center, Kansas City, the University of California Hospital, San Francisco, and Vanderbilt University Hospital, Nashville, as a proximate result of statements by McFadden and other officials of UMH. I have also learned that UMH refused to provide an employment reference on my behalf to the New York State Office of Mental Health.

On or about June 23, 1982, the EEOC issued its Determination that "Examination of the evidence shows the following facts which indicate that there is reasonable cause to believe that the allegation (the Charging Party alleged that Respondent discriminated against him by denying him comparable wages for comparable work because of his race, Black) is true. See page 1 of Appendix C.

Subscribed to in my presence and Sworn to before me

this 2d day of March, 1989.

/s/Curtis L. Wrenn

/s/Joan J. Hall
NOTARY 4943595
My Commission Expires:
10/31/90

Subscribed and sworn to before me this
2nd day of March, 1989.